

EXHIBIT “G”

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE SOUTHERN DISTRICT OF NEW YORK

3 WHITESTONE CONSTRUCTION, CORP.,)

4 Plaintiff,)

5 vs.)

No. 20-cv-1006

6 YUANDA USA CORPORATION,)

7 Defendant.)

8
9 The videotaped videoconference deposition of
10 STEVEN GRZIC, called for examination, taken pursuant to
11 the Federal Rules of Civil Procedure of the United States
12 District Courts pertaining to the taking of depositions,
13 taken before KELLY A. BRICHETTO, CSR No. 84-3252,
14 Certified Shorthand Reporter of the State of Illinois, on
15 the 27th day of January, 2021, at 9:09 a.m.

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19 REPORTED REMOTELY FROM CHICAGO, ILLINOIS
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2
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21 ALSO PRESENT:
22 MR. JUSTIN BOND, Legal Videographer
23
24

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1 THE VIDEOGRAPHER: Good morning. Today is
2 January 27th, 2021. The time is 9:09 a.m., and we are on
3 the record.
4 Today we'll take a videotaped deposition
5 in case Number 20-cv 1006. This deposition is being held
6 remotely.
7 Counsel, please state your appearance and
8 affiliation for the record.
9 MR. GILL: Adam Gill, G-I-L-L, with Fox Swibel
10 in Chicago representing Defendant, Yuanda USA
11 Corporation.
12 MR. CARBONE: Donald J. Carbone for Goetz
13 Fitzpatrick, LLP for the Plaintiff.
14 THE VIDEOGRAPHER: Thank you.
15 Would you please swear the witness.
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<p style="text-align: right;">Page 6</p> <p>1 (Witness sworn.)</p> <p>2 WHEREUPON:</p> <p>3 STEVEN GRZIC,</p> <p>4 called as a witness herein, having been first duly sworn,</p> <p>5 was examined and testified as follows:</p> <p>6 DIRECT EXAMINATION</p> <p>7 BY MR. GILL:</p> <p>8 Q. Can you state your name and spell your last</p> <p>9 name for the record, please.</p> <p>10 A. My name is Steven Grzic, G-R-Z-I-C.</p> <p>11 MR. GILL: Okay. For the record, this is the</p> <p>12 discovery deposition of Steve Grzic taken pursuant to</p> <p>13 notice and agreement of the parties, the Federal Rules of</p> <p>14 Civil Procedure and all local rules.</p> <p>15 BY MR. GILL:</p> <p>16 Q. Mr. Grzic, have you ever given a deposition</p> <p>17 before?</p> <p>18 A. Yes, I have.</p> <p>19 Q. How many times?</p> <p>20 A. Five, six times.</p> <p>21 Q. Okay. When was the last time you gave one?</p> <p>22 A. Probably two, three years ago.</p> <p>23 Q. Okay.</p> <p>24 A. Best guess.</p>	<p style="text-align: right;">Page 8</p> <p>1 said, what you heard and things like that, but I don't</p> <p>2 want you to guess. I told Mr. Dearth last week I want,</p> <p>3 you know, the best answer you could give but I also want</p> <p>4 answers based on what you know or what you saw or what</p> <p>5 you did.</p> <p>6 Is that okay as ground rules?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. If you can look at Exhibit 20,</p> <p>9 Defendant's Exhibit 20. I saw Mr. Carbone open the</p> <p>10 FedEx. Thank you for doing that. Yep. I'd just like --</p> <p>11 yep. Take off the binder clip and look at the top</p> <p>12 exhibit which is Exhibit 20.</p> <p>13 And, Don, I do intend to use some of the</p> <p>14 exhibits I used last week. Do you have those available</p> <p>15 for Mr. Grzic?</p> <p>16 MR. CARBONE: He has those in a pile.</p> <p>17 MR. GILL: Okay. Thank you.</p> <p>18 BY MR. GILL:</p> <p>19 Q. And, for the record, Exhibit 20 is</p> <p>20 Plaintiff's Initial Disclosure Pursuant to Rule 26.</p> <p>21 Mr. Grzic, if you can read on the first page</p> <p>22 to yourself what it says about what your knowledge is.</p> <p>23 (Witness peruses document.)</p> <p>24 A. Okay.</p>
<p style="text-align: right;">Page 7</p> <p>1 Q. I'm going to go over the basics just so we're</p> <p>2 on the same page and you understand my expectations and I</p> <p>3 understand so that we have the same ground rules.</p> <p>4 Obviously there's a court reporter here</p> <p>5 taking down everything you and I say, and even in the</p> <p>6 best of times, it's difficult to take down the questions</p> <p>7 and answers properly, but with a remote deposition, it's</p> <p>8 even more of a problem, so I ask that all of your answers</p> <p>9 or responses be verbal. Nods of the head obviously don't</p> <p>10 translate well but -- so the same thing for um-hum,</p> <p>11 na-huh, kind of nonverbal but responses like that, so I</p> <p>12 ask that all your answers be verbally.</p> <p>13 If you need to take a break at any time, just</p> <p>14 let me know. I only ask that if there's a question</p> <p>15 pending you answer the question and then we take a break.</p> <p>16 I'm going to ask you about a lot of</p> <p>17 communication and -- between you and others, and I want</p> <p>18 to make sure that you understand I'm not talking about</p> <p>19 any communication with Mr. Carbone, Mr. Kushner or anyone</p> <p>20 else with their firm.</p> <p>21 And most importantly, this deposition is</p> <p>22 going to be about your personal knowledge and not for you</p> <p>23 as a representative of Whitestone Construction, so I want</p> <p>24 to know what you, what you saw, what you did, what you</p>	<p style="text-align: right;">Page 9</p> <p>1 Q. Do you agree with the statement about what</p> <p>2 your knowledge -- the description of what your knowledge</p> <p>3 about this project is?</p> <p>4 A. Yes, a general knowledge.</p> <p>5 Q. Okay. I just want to ask you that because</p> <p>6 those are kind of the topics in general that we're going</p> <p>7 to be discussing today, and I want to make sure you agree</p> <p>8 with that statement.</p> <p>9 Before we get into the substance of this, the</p> <p>10 dispute between Whitestone and Yuanda, aside from</p> <p>11 conversations with any of your attorneys have you</p> <p>12 discussed the subject matter of this deposition with</p> <p>13 anyone?</p> <p>14 A. No.</p> <p>15 Q. Did you have any discussions with James</p> <p>16 Dearth after his deposition last week?</p> <p>17 A. I simply -- I simply asked him in general how</p> <p>18 did it go.</p> <p>19 Q. And what did Mr. Dearth tell you?</p> <p>20 A. He said he thought it went fine.</p> <p>21 Q. What did you do to prepare for this</p> <p>22 deposition today?</p> <p>23 A. I -- I met with my lawyer.</p> <p>24 Q. Did you look at any documents?</p>

<p style="text-align: right;">Page 10</p> <p>1 A. Yes.</p> <p>2 Q. What documents did you look at?</p> <p>3 A. I was -- it was many documents. Can I</p> <p>4 remember specifically anything? The only thing that I</p> <p>5 remember specifically was the -- our purchase order of</p> <p>6 White -- the purchase order between Whitestone</p> <p>7 Construction and Yuanda.</p> <p>8 Q. Okay. So some background information about</p> <p>9 you.</p> <p>10 What is your highest level of education?</p> <p>11 A. I have a bachelor's degree in engineering.</p> <p>12 Q. Okay. Where did you receive that?</p> <p>13 A. Manhattan College.</p> <p>14 Q. When did you receive that?</p> <p>15 A. 1998.</p> <p>16 Q. Are you currently employed?</p> <p>17 A. Yes.</p> <p>18 Q. What is your position?</p> <p>19 A. I'm Vice-President at Whitestone</p> <p>20 Construction.</p> <p>21 Q. As the Vice-President of Whitestone, what are</p> <p>22 your -- what is your general role or duties?</p> <p>23 A. Oversee the -- oversee all the projects in</p> <p>24 general. I don't get involved to the day -- day to day</p>	<p style="text-align: right;">Page 12</p> <p>1 Q. As project manager, what was your role?</p> <p>2 A. To oversee a certain amount of projects</p> <p>3 specifically, not to be involved in -- in general in the</p> <p>4 company.</p> <p>5 Q. How would you define Whitestone's business</p> <p>6 generally?</p> <p>7 A. We're a construction company based in New</p> <p>8 York City that does -- that -- that specializes in facade</p> <p>9 work.</p> <p>10 Q. Facade work being window systems,</p> <p>11 curtainwall, other cladding systems?</p> <p>12 A. Windows, curtainwall, roofing, masonry,</p> <p>13 anything to do with the building enclosure.</p> <p>14 Q. For commercial construction projects?</p> <p>15 A. Some -- some pri -- some private but mostly</p> <p>16 public works.</p> <p>17 Q. Prior to beginning with Whitestone in 2007</p> <p>18 did you have any experience in the commercial</p> <p>19 construction industry?</p> <p>20 A. Prior to that, between graduating college and</p> <p>21 to that year, I was a design engineer.</p> <p>22 Q. A design engineer with whom?</p> <p>23 A. For an HVA -- mechanical, electrical,</p> <p>24 plumbing design firm.</p>
<p style="text-align: right;">Page 11</p> <p>1 usually, but if I have to, I do, but otherwise, it's a</p> <p>2 general -- a general involvement in all the projects.</p> <p>3 Q. How many projects generally does Whitestone</p> <p>4 have going at any one time?</p> <p>5 A. Anywhere between 10 to 15.</p> <p>6 Q. During the course of the project that's the</p> <p>7 subject of this dispute from 2013 to 2017, was this the</p> <p>8 larger -- largest project that Whitestone had?</p> <p>9 A. Yes, I believe so.</p> <p>10 Q. Who are the -- the founders of Whitestone?</p> <p>11 A. The founder was my father.</p> <p>12 Q. When did he start Whitestone?</p> <p>13 A. I think 1983, 1984, something like that.</p> <p>14 Q. And, for the record, what's your father's</p> <p>15 name?</p> <p>16 A. Boris, B-O-R-I-S.</p> <p>17 Q. Is this a family-owned business?</p> <p>18 A. Yes, it is.</p> <p>19 Q. Can you describe your -- briefly describe</p> <p>20 your history at Whitestone?</p> <p>21 A. I started full time at Whitestone around 2007</p> <p>22 or 2008.</p> <p>23 Q. And what was your position when you started?</p> <p>24 A. Originally project manager.</p>	<p style="text-align: right;">Page 13</p> <p>1 Q. So it was not a cladding company --</p> <p>2 A. No.</p> <p>3 Q. -- or facade? Okay.</p> <p>4 A. No.</p> <p>5 Q. When did you become vice-president of</p> <p>6 Whitestone?</p> <p>7 A. Vice-president would be probably last year.</p> <p>8 Q. What was your role or title prior to becoming</p> <p>9 vice-president?</p> <p>10 A. I was president.</p> <p>11 Q. When did you become president?</p> <p>12 A. Approximately 2009 I would say, 2008, 2009.</p> <p>13 Q. Okay. So approximately 2009 through</p> <p>14 approximately 2018 or '19 you were president?</p> <p>15 A. 2019, yeah. Probably, yeah.</p> <p>16 Q. Why did you go from president to</p> <p>17 vice-president?</p> <p>18 A. Because my sister is the other owner of</p> <p>19 Whitestone Construction, so we -- for our own internal</p> <p>20 reasons, she -- we decided to switch roles, which she</p> <p>21 became the president and I became the vice-president.</p> <p>22 Q. Are -- you said it was founded by your</p> <p>23 father. Is he still -- is he still involved in the</p> <p>24 company?</p>

<p style="text-align: right;">Page 14</p> <p>1 A. No, he is not.</p> <p>2 Q. Okay. It's you and your sister who are</p> <p>3 co-owners?</p> <p>4 A. Yes.</p> <p>5 Q. When you were -- had the role of president,</p> <p>6 was your involvement in projects much as it is now, just</p> <p>7 kind of a general overview of the projects without being</p> <p>8 involved day to day?</p> <p>9 A. Correct.</p> <p>10 Q. For this project, this litigation or the --</p> <p>11 Strike that.</p> <p>12 For this project relating to the curtainwall</p> <p>13 system where Whitestone hired Yuanda you were on a</p> <p>14 significant number of e-mails between Whitestone and</p> <p>15 Yuanda. Is that common?</p> <p>16 A. This job had more problems than normal job --</p> <p>17 than the normal job, so yes, when jobs are -- when</p> <p>18 certain jobs have a lot more issues, then yes, I'm more</p> <p>19 involved.</p> <p>20 Q. Okay. Are you -- there are also a number of</p> <p>21 e-mails where you had personally sent e-mails to Yuanda.</p> <p>22 Is that common when a project is more complicated or has</p> <p>23 more problems?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">Page 16</p> <p>1 A. Yes.</p> <p>2 Q. What is your understanding of that phrase?</p> <p>3 A. That's a description of the responsibilities</p> <p>4 of a -- of any party in a -- in a construction contract.</p> <p>5 Q. And that scope of work, since you said the</p> <p>6 construction contract, is that scope of work defined by</p> <p>7 the contract?</p> <p>8 A. Yes.</p> <p>9 Q. The term defective work, does that mean</p> <p>10 something specific to you?</p> <p>11 A. Defective would mean something that's -- that</p> <p>12 has been rejected by anybody with authority during the</p> <p>13 project.</p> <p>14 Q. Are you familiar with the term warranty work?</p> <p>15 A. Yes.</p> <p>16 Q. What does that mean?</p> <p>17 A. Warranty work is anything that -- anything</p> <p>18 through the normal use of -- normal use of and wear --</p> <p>19 natural wear and tear of a product is under our warranty,</p> <p>20 is under our guarantee for a certain period of time</p> <p>21 due -- under normal wear and tear just something failing</p> <p>22 in the system.</p> <p>23 Q. Is your understanding that warranty work,</p> <p>24 correction of warranty work is covered by, generally</p>
<p style="text-align: right;">Page 15</p> <p>1 Q. And from the e-mails, it's my interpretation,</p> <p>2 please correct me if I'm wrong, that you were familiar</p> <p>3 with Yuanda's work generally; is that accurate?</p> <p>4 A. Yes.</p> <p>5 Q. What do you understand Yuanda's part of this</p> <p>6 project to be?</p> <p>7 A. They were the design engineers of -- and</p> <p>8 manufacturers of the curtainwall system and other</p> <p>9 building enclosure systems.</p> <p>10 Q. And are you aware of the problems that arose</p> <p>11 during or after construction regarding the curtainwall</p> <p>12 system known as the WT-3 clerestory?</p> <p>13 A. Yes.</p> <p>14 Q. What is your general understanding of that</p> <p>15 problem or issue?</p> <p>16 A. That the -- that the -- that the system</p> <p>17 itself was rejected by the architect of record and,</p> <p>18 therefore, by the owner and, therefore, by -- by the</p> <p>19 construction manager.</p> <p>20 Q. I'm going to ask questions about general</p> <p>21 construction terms, so, again, you and I have the same</p> <p>22 understanding, same basis of information so that we can</p> <p>23 talk in the same language.</p> <p>24 Do you understand what a scope of work is?</p>	<p style="text-align: right;">Page 17</p> <p>1 covered by a contractor's subcontract?</p> <p>2 A. I -- can you repeat that one more time?</p> <p>3 Q. Is it your understanding whether or not the</p> <p>4 correction or repairs to something that's determined to</p> <p>5 be warranty work is covered or not covered by a</p> <p>6 subcontract or a contract?</p> <p>7 A. By a specific -- you mean --</p> <p>8 Q. Generally.</p> <p>9 A. Yes, it could be covered by a contract or a</p> <p>10 subcontract, yes.</p> <p>11 Q. Are you familiar with the term punch list or</p> <p>12 punch list work?</p> <p>13 A. Yes.</p> <p>14 Q. What is punch list work?</p> <p>15 A. Punch list work is generally just a list of</p> <p>16 out -- minor outstanding items that need to be finished</p> <p>17 in order for the -- for an owner or an architect to -- to</p> <p>18 finally accept the work.</p> <p>19 Q. Okay. Now I'm going to get into the</p> <p>20 substance of what we're here to talk about today. I'm</p> <p>21 going to start talking about the contracts.</p> <p>22 Are you familiar with the contract between</p> <p>23 the general contractor, Sciamé, and the owner?</p> <p>24 A. Between Sciamé and the owner?</p>

Page 18

1 Q. Yes.

2 A. Am I aware of the contract?

3 Q. Yes.

4 A. Yes.

5 Q. Are you familiar -- are you aware of it?

6 A. I'm aware there is a contract, yes.

7 Q. Okay. Are you familiar with that contract?

8 A. I don't believe, no.

9 Q. Have you seen that contract?

10 A. Not that I remember specifically, no.

11 Q. Do you know if you or Whitestone have a copy

12 of that contract?

13 A. I am not sure if we do. I can't say for

14 certain --

15 Q. So you don't know that; right?

16 A. I can't say definitively -- I cannot say

17 definitively yes, we do have a contract. I don't -- I'm

18 not sure.

19 Q. Are you familiar with the subcontract between

20 Whitestone and Scieme?

21 A. Somewhat, yes.

22 Q. Did you take any part in negotiating the

23 terms of that contract?

24 A. I signed that contract.

Page 19

1 Q. Did you take part in negotiating that

2 contract?

3 A. This is a public -- public bid. There's

4 really no negotiating in the contract.

5 Q. There's no negotiating the terms of the

6 subcontract, is that your testimony?

7 A. Yeah, pretty much, yes.

8 Q. Since there's no negotiating, did Scieme just

9 present you with a draft subcontract and say you sign it

10 or you walk away, it's your choice?

11 A. That's what it was -- that's what's inferred,

12 yes.

13 Q. Did -- prior to signing the subcontract did

14 Whitestone -- do you know if Whitestone submitted a

15 proposal?

16 A. It was a -- it was a public bid that we

17 submitted.

18 Q. So there was a proposed -- you responded to

19 an RFP or something?

20 A. Yes. Correct. Yeah, a sealed envelope with

21 our -- with our number.

22 Q. Even though you were a subcontractor you were

23 required to submit a sealed bid to the general

24 contractor?

Page 20

1 A. Yes. Because technically they're not a

2 general contractor. They're a construction manager.

3 There's -- there are differences.

4 Q. I know, but you have a contract with Scieme.

5 You don't have a contract with the public owner?

6 A. Correct.

7 Q. Were there any parts -- even though you

8 couldn't negotiate were there any parts of the

9 subcontract that Whitestone was concerned about or had

10 objections about?

11 A. Not that I specifically remember at the time.

12 Q. If you can look at what was previously marked

13 as Exhibit 5 and new Exhibit 21.

14 And, for the record, Exhibit 5 is the AIA

15 form contract, the A401 and Rider A. Exhibit 21 is a

16 checklist and Exhibit A to Rider B.

17 Do you recognize these documents, Exhibits 5

18 and 21?

19 A. Yes.

20 Q. What are these documents?

21 A. These are basically the contract between

22 Whitestone Construction and Scieme.

23 Q. And, for the record, these are just a

24 portion -- I will represent these are just a portion of

Page 21

1 the contract. It's not the entire contract.

2 A. Yes.

3 Q. If you can turn to page WCC859 in Exhibit 5

4 which is the numbered page 18 of the AIA form document.

5 Do you see that?

6 A. Was it 859?

7 Q. 859.

8 A. Okay.

9 Q. Do you recognize the signature, either of the

10 signatures on that page?

11 A. One of them is my signature, and the other's

12 a signature of the executive vice-president of Scieme.

13 Q. Okay. Your signature is above the one that

14 says subcontract; is that correct?

15 A. Correct.

16 Q. The first page of the subcontract says it was

17 made as of October 7th, 2013. Do you know if that's

18 accurate?

19 MR. CARBONE: What page are you referring

20 to -- the first page of the AIA document?

21 MR. GILL: Yeah, on the AIA document page 842.

22 MR. CARBONE: Bates stamp, okay.

23 BY MR. GILL:

24 Q. The document says --

<p style="text-align: right;">Page 22</p> <p>1 A. Are you waiting --</p> <p>2 Q. Sorry. 842 says the agreement's made as of</p> <p>3 October 7th, 2013. Do you know if that's accurate?</p> <p>4 A. Appears to be, yes.</p> <p>5 Q. Do you know when you or Whitestone first</p> <p>6 received a draft of this subcontract relative to that</p> <p>7 date?</p> <p>8 A. I would not know.</p> <p>9 Q. Okay. What is the scope of work for this</p> <p>10 subcontract?</p> <p>11 A. The scope of work is to provide the exterior</p> <p>12 building envelope for this building.</p> <p>13 Q. Does that include the WT-3 clerestory system?</p> <p>14 A. Yes, it does.</p> <p>15 Q. Does the subcontract or the scope of work</p> <p>16 include the design for the WT-3 clerestory?</p> <p>17 A. Yes, it does.</p> <p>18 Q. And includes the fabrication and delivery of</p> <p>19 the WT-3 clerestory?</p> <p>20 A. Yes.</p> <p>21 Q. That obviously includes the installation of</p> <p>22 that; right?</p> <p>23 A. Yes.</p> <p>24 Q. If you look to Exhibit 21, pages 866 through</p>	<p style="text-align: right;">Page 24</p> <p>1 are not part of this checklist are also part of our</p> <p>2 contract also, so this -- this contract basically is just</p> <p>3 a list of general items that are part of -- general major</p> <p>4 items that are part of our checklist. I'm sorry. Major</p> <p>5 general -- general major items that are part of our scope</p> <p>6 of work.</p> <p>7 Q. Okay. If you look at page 867 --</p> <p>8 A. Okay.</p> <p>9 Q. -- line item 41, and, for the record, that</p> <p>10 states: "Provide all shop drawings, product submittals,</p> <p>11 details, calculations and samples, et cetera, as</p> <p>12 specified and/or required to complete the scope of this</p> <p>13 work."</p> <p>14 A. Yes.</p> <p>15 Q. What does that mean to you?</p> <p>16 A. Basically -- sorry just to repeat to you but</p> <p>17 basically means exactly what it says. "Provide all shop</p> <p>18 drawings, product submittals, detail calculations and</p> <p>19 samples as specified and are required to complete the</p> <p>20 scope of work." I -- I wouldn't know how to break</p> <p>21 that -- that sentence down any -- any further.</p> <p>22 Q. Okay. Fair enough.</p> <p>23 If you can turn to 869, line item 66.</p> <p>24 A. Okay.</p>
<p style="text-align: right;">Page 23</p> <p>1 874, it appears to be a chart or a checklist of some</p> <p>2 kind. Do you see that?</p> <p>3 A. 866 through 874?</p> <p>4 Q. Yep.</p> <p>5 A. Okay.</p> <p>6 Q. What is that?</p> <p>7 A. It's just a -- the trade scope checklist.</p> <p>8 Q. What is a trade scope checklist?</p> <p>9 A. It's just basically a list that's part of the</p> <p>10 contract just to make sure -- to clarify what is in but</p> <p>11 not limited to our scope of work in the contract.</p> <p>12 Q. In this chart, in this checklist, on the</p> <p>13 right hand column it's a yes and no, and the columns that</p> <p>14 are marked yes, what does that mean?</p> <p>15 A. That this would be in the contract between</p> <p>16 Whitestone and Sciamé.</p> <p>17 Q. Is everything that's listed in here the</p> <p>18 labor, materials and services that Whitestone agreed to</p> <p>19 provide to the project?</p> <p>20 A. Yes, but this list is not all inclusive.</p> <p>21 Q. What's not included in this list?</p> <p>22 A. I -- because technically all the --</p> <p>23 everything listed in the specs and the drawings are</p> <p>24 also -- anything listed in the specs and drawings that</p>	<p style="text-align: right;">Page 25</p> <p>1 Q. And that states: "Provide PE engineered and</p> <p>2 stamped drawings for structural review for all scope,</p> <p>3 provide calculations for review, coordinate them with PE</p> <p>4 stamped drawings." My question is the same as the last</p> <p>5 one. Is that self-explanatory or does that mean</p> <p>6 something other than what it states?</p> <p>7 A. No. To me it's self-explanatory.</p> <p>8 Q. What are PE engineered and stamped drawings?</p> <p>9 A. PE stands for professional engineer who's --</p> <p>10 who is an engineer that's licensed by the state to</p> <p>11 provide such services and take responsibility for an</p> <p>12 engineered system, so for -- an engineer with a license</p> <p>13 by the state has to engineer and -- engineer, design and</p> <p>14 provide calculations to back up his design.</p> <p>15 Q. The two line items we looked at, 41 and 66,</p> <p>16 relate to all of the cladding system; is that correct?</p> <p>17 A. Correct.</p> <p>18 Q. Including the WT-3 clerestory?</p> <p>19 A. Yes.</p> <p>20 Q. If you look on page 871 and 872.</p> <p>21 A. Okay.</p> <p>22 Q. I'm not going to read this and I don't -- if</p> <p>23 you -- you can read it if you need to, but line items 98</p> <p>24 through 103, generally what does this refer to?</p>

<p style="text-align: right;">Page 26</p> <p>1 A. This has more to do with the -- oh, you said</p> <p>2 98 through which one?</p> <p>3 Q. 103.</p> <p>4 A. This is again the trade scope checklist.</p> <p>5 That pretty much just goes into more detail, more</p> <p>6 technical detail of -- of our scope of work. Again, this</p> <p>7 would not -- would not be all inclusive but is more</p> <p>8 general -- a more generalization of our -- of our</p> <p>9 technical scope of work.</p> <p>10 Q. And, just for the record, part of these -- 98</p> <p>11 through 102 relates to aluminum, sorry, glazed aluminum</p> <p>12 curtainwall, and 103 relates to the structural glass</p> <p>13 curtainwall.</p> <p>14 It's my understanding from this that 98</p> <p>15 through 103, the glazed aluminum curtainwall, it lists</p> <p>16 type. Does that include the WT10 -- the WT-3 clerestory?</p> <p>17 A. Yes, it is.</p> <p>18 Q. Is that -- when it says type 1A, 1B, 1C, 3,</p> <p>19 is the 3 the WT-3?</p> <p>20 A. I'm sorry. You have to say that again. You</p> <p>21 lost me.</p> <p>22 Q. Sure. Directly above the line, line item 89,</p> <p>23 there's a line that --</p> <p>24 A. Yes.</p>	<p style="text-align: right;">Page 28</p> <p>1 Q. And that includes all glazed aluminum</p> <p>2 curtainwall system in the WT-3?</p> <p>3 A. Yes.</p> <p>4 Q. If you can turn back to Exhibit 5, page 844,</p> <p>5 Article 1 on Page 3.</p> <p>6 A. Okay.</p> <p>7 Q. You see that the first sentence states in</p> <p>8 part: "The subcontract documents consist of," and then</p> <p>9 2: "The prime contract consisting of the agreement</p> <p>10 between owner and contractor and the other contract</p> <p>11 documents enumerated therein." Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. Do you know what that means?</p> <p>14 A. Again, this is -- you mean the entire</p> <p>15 sentence?</p> <p>16 Q. The reference to the prime contract being a</p> <p>17 part of the subcontract documents.</p> <p>18 A. Yes. It means that the -- the contract, any</p> <p>19 Terms and Conditions of the contract between the</p> <p>20 construction manager, Sciame, and the owner are made part</p> <p>21 of the contract between Whitestone and Sciame.</p> <p>22 Q. And based on your testimony a couple minutes</p> <p>23 ago, it's my understanding that you are not aware whether</p> <p>24 you saw or Whitestone has a copy of that prime contract?</p>
<p style="text-align: right;">Page 27</p> <p>1 Q. -- says project requirements glazed aluminum</p> <p>2 curtainwall (type 1A, 1B, 1C 3).</p> <p>3 A. Yes.</p> <p>4 Q. Do you see that? Does that 3 refer to the</p> <p>5 WT-3 clerestory or curtainwall system?</p> <p>6 A. That would be my understanding, yes.</p> <p>7 Q. Okay. If you look at the last page of</p> <p>8 Exhibit 21 which is Bates stamped 960 --</p> <p>9 A. Yes.</p> <p>10 Q. -- it is a document that says Exhibit A,</p> <p>11 Description of Project. What is the -- you can read it</p> <p>12 into the record if you want, read it to yourself. What</p> <p>13 is that description? What does that relate to?</p> <p>14 A. "The work consists of the procurement and</p> <p>15 installation of all exterior wall systems including</p> <p>16 glazed aluminum, structural glass curtainwall systems,</p> <p>17 aluminum framed entrances and storefronts, Terracotta</p> <p>18 wall systems, steel framed window wall, aluminum framed</p> <p>19 folding wall and channel glass wall assemblies."</p> <p>20 Q. And what is that? Is that work that</p> <p>21 Whitestone was gonna provide?</p> <p>22 A. Yes. Again, this is just a general overview</p> <p>23 and description of our scope of work. Again, not all --</p> <p>24 again, this is not all encompassing.</p>	<p style="text-align: right;">Page 29</p> <p>1 A. No, I don't know. No.</p> <p>2 Q. If you can turn to the next page, 845,</p> <p>3 Article 2.</p> <p>4 A. Okay.</p> <p>5 Q. The first sentence states in part: "The</p> <p>6 subcontractor expressly assumes to contractor all of the</p> <p>7 obligations and responsibilities of the performance of</p> <p>8 this subcontract as the contractor assumes towards the</p> <p>9 owner -- toward the owner respecting the performance of</p> <p>10 the prime contract." What does that sentence mean to</p> <p>11 you?</p> <p>12 A. That any obligations that the contractor has</p> <p>13 to the owner is also the responsibility -- is also</p> <p>14 obligations that the subcontractor would owe to the</p> <p>15 contractor and the owner.</p> <p>16 Q. Do you remember seeing that language before</p> <p>17 you signed this subcontract?</p> <p>18 A. Do I specifically remember that? No, but</p> <p>19 that's -- it's a general -- it's -- it's industry</p> <p>20 practice to -- for that to be included in contracts.</p> <p>21 Q. How familiar are you with the AIA 401</p> <p>22 contract?</p> <p>23 A. We don't use it that often, but I've come</p> <p>24 across it before.</p>

<p style="text-align: right;">Page 30</p> <p>1 Q. If you can turn to page 847.</p> <p>2 Section 4.1.5 --</p> <p>3 A. Okay.</p> <p>4 Q. -- states in part, the first sentence states:</p> <p>5 "The subcontract agrees that the contractor and the</p> <p>6 architect shall have the authority to reject work of the</p> <p>7 subcontractor that does not conform to the prime</p> <p>8 contract." What does that sentence mean to you?</p> <p>9 A. That's, again, pretty self-explanatory, that</p> <p>10 the contract -- the contractor and the architect have the</p> <p>11 right to reject work and anything that's -- anything</p> <p>12 provided under our contract.</p> <p>13 Q. In your experience, how common is that?</p> <p>14 A. How common that -- that something gets</p> <p>15 rejected or how common that this term or this condition</p> <p>16 is in the contract?</p> <p>17 Q. Good question. Fair clarification.</p> <p>18 How common is it for this requirement to be</p> <p>19 included in -- in a subcontract?</p> <p>20 A. Very, very, very common.</p> <p>21 Q. Is it more common than not that this appears</p> <p>22 in a contract?</p> <p>23 A. Yes. I would -- if I had to guess at a</p> <p>24 number, this is included 99 percent of the time.</p>	<p style="text-align: right;">Page 32</p> <p>1 give you an answer.</p> <p>2 Q. Okay.</p> <p>3 A. It's -- to me it's self-explanatory.</p> <p>4 Q. During the dispute or the discussions between</p> <p>5 Whitestone and Yuanda, and I believe you had said this in</p> <p>6 e-mails, Whitestone and I believe, like I said, you had</p> <p>7 said that Whitestone and Yuanda were required to perform</p> <p>8 work under protest. What did you mean by that?</p> <p>9 A. That I -- as per Whitestone's contract with</p> <p>10 the construction manager, Sciamé, that -- if they -- if</p> <p>11 they deemed something defective or not -- not -- or not</p> <p>12 proscribing to contract documents, that even if we feel</p> <p>13 that we are owed an extra to conduct the work that we</p> <p>14 have to -- we cannot -- we cannot -- we -- we are not</p> <p>15 allowed to not do the work as per contract until -- until</p> <p>16 a change order is issued, that we have to as per contract</p> <p>17 proceed with the work while any negotiations or -- or --</p> <p>18 I don't know. What's the other term? While any</p> <p>19 negotiations or claims are filed regarding this --</p> <p>20 regarding the extra work, that we are not allowed to</p> <p>21 not -- we are not allowed to not do the work.</p> <p>22 Q. If you turn to page 850 in Exhibit 5, down at</p> <p>23 the bottom is paragraph 5.1.4. Is your understanding of</p> <p>24 your requirement to perform under protest as you</p>
<p style="text-align: right;">Page 31</p> <p>1 Q. When you signed this contract, were you aware</p> <p>2 that the owner and the architect had the authority to</p> <p>3 reject Whitestone's work?</p> <p>4 A. Yes.</p> <p>5 Q. If you can turn to the next page, 848. Under</p> <p>6 Section 4.5, Warranty, the second and third sentences</p> <p>7 read: "The subcontractor further warrants that the work</p> <p>8 will conform to the requirements of the subcontract</p> <p>9 documents and will be free from defects except for those</p> <p>10 inherent in the quality of the work of the -- of --</p> <p>11 strike that -- the quality of the work the subcontract</p> <p>12 documents require or permit. Work materials or equipment</p> <p>13 not conforming to these requirements may be considered</p> <p>14 defective." What does that mean to you?</p> <p>15 A. The subcontractor further warrants that the</p> <p>16 work will be -- will conform to the requirements of the</p> <p>17 subcontract documents and will be free from defects</p> <p>18 except for those inherent in the quality of the work the</p> <p>19 subcontract documents require or permit." What does this</p> <p>20 mean to me?</p> <p>21 Q. Yep.</p> <p>22 A. Again, I can't, I can't really -- I wouldn't</p> <p>23 know how to explain any further or break it down any</p> <p>24 easier than what this says, so, so I'm not sure I can</p>	<p style="text-align: right;">Page 33</p> <p>1 described it, is that required by this paragraph or is</p> <p>2 there -- as far as you know -- I'm not asking for a legal</p> <p>3 conclusion. I know your attorney is going to interpret</p> <p>4 the contract, and we're going to argue about that, but as</p> <p>5 far as you understand the contract and Whitestone's</p> <p>6 requirements, is that in 5.1.4 or is that somewhere else?</p> <p>7 A. Yes. What I was referring to is -- is</p> <p>8 mentioned in 5.1.4. It could also be in another part of</p> <p>9 the contract that I'm not aware, but this 5.1.4 does --</p> <p>10 does refer. What I was saying before is referred to in</p> <p>11 5.1.4.</p> <p>12 Q. Okay. I want to turn your attention and talk</p> <p>13 about the purchase order now. I want to talk about</p> <p>14 purchase orders generally before we get to the ones</p> <p>15 specific to this.</p> <p>16 A. Am I done with this exhibit?</p> <p>17 Q. I believe we are --</p> <p>18 A. For now?</p> <p>19 Q. -- done with that one -- we're done with it</p> <p>20 for now, and I believe we are done --</p> <p>21 A. Okay.</p> <p>22 Q. -- with it for the day.</p> <p>23 MR. CARBONE: Where are we going, what</p> <p>24 exhibit?</p>

<p style="text-align: right;">Page 34</p> <p>1 MR. GILL: Pardon?</p> <p>2 MR. CARBONE: What exhibit?</p> <p>3 MR. GILL: I'm not -- I'm not directing him to</p> <p>4 an exhibit yet.</p> <p>5 MR. CARBONE: Oh.</p> <p>6 BY MR. GILL:</p> <p>7 Q. In 2013 were you generally familiar with</p> <p>8 Whitestone's purchase order and the process where it</p> <p>9 hires vendors?</p> <p>10 A. Can you repeat that one more time?</p> <p>11 Q. In 2013 were you familiar with Whitestone's</p> <p>12 purchase orders and the way that Whitestone generally</p> <p>13 hires vendors to perform work?</p> <p>14 A. In general, yes.</p> <p>15 Q. Okay. Generally what is the process that</p> <p>16 Whitestone used in 2013 to hire vendors?</p> <p>17 A. Basically was to get a proposal from them at</p> <p>18 the time of bid for the project and -- and when we submit</p> <p>19 our price to -- to an owner or a construction manager,</p> <p>20 we -- based on our estimate, we -- we come up with our</p> <p>21 number based on the numbers provided to us by vendors and</p> <p>22 subcontractors, and we decide to use their numbers</p> <p>23 basically if we have any history with them, if we trust</p> <p>24 them, if they've performed in the past and -- and take</p>	<p style="text-align: right;">Page 36</p> <p>1 marked as Exhibit 4, the document entitled Whitestone</p> <p>2 Construction Corporation Purchase Order 13-0139-002. Do</p> <p>3 you recognize this document?</p> <p>4 A. Yes. This is the purchase order between</p> <p>5 Whitestone and Yuanda.</p> <p>6 Q. Okay. And if you look at the second page, do</p> <p>7 you recognize -- there are two signatures. Do you</p> <p>8 recognize the signature?</p> <p>9 A. One is my signature, and the other one is by</p> <p>10 the president of Yuanda USA.</p> <p>11 Q. All the other pages except the signature page</p> <p>12 have two sets of initials in the lower right. Do you</p> <p>13 recognize one or both sets of initials?</p> <p>14 A. One of them is mine. The other seems to be</p> <p>15 from the president of Yuanda USA.</p> <p>16 Q. Okay. Looking just at the first two pages,</p> <p>17 did you take any part in drafting or creating or</p> <p>18 negotiating this purchase order?</p> <p>19 A. Not really.</p> <p>20 Q. Who at Whitestone, if you know, drafted and</p> <p>21 negotiated the terms of this purchase order?</p> <p>22 A. It would be Phil Carvelas.</p> <p>23 Q. And what is -- what was Phil's title in 2013?</p> <p>24 A. He's project manager.</p>
<p style="text-align: right;">Page 35</p> <p>1 that into account on the -- in our overall -- in our</p> <p>2 overall estimate.</p> <p>3 Q. For this project, is that typically or is</p> <p>4 that what you did for identifying vendors for this</p> <p>5 project?</p> <p>6 A. Yes.</p> <p>7 Q. You said you take into account your history</p> <p>8 with a vendor. Do you have or did you have a history</p> <p>9 with vendor in 2000 -- Or sorry. Did you have a history</p> <p>10 with Yuanda in 2013?</p> <p>11 A. Yes.</p> <p>12 Q. And what was that history?</p> <p>13 A. I believe they provided curtainwall to us on</p> <p>14 a -- on a handful of jobs.</p> <p>15 Q. And had you been satisfied with the product</p> <p>16 and their fulfilling the purchase order in the past?</p> <p>17 A. Yes.</p> <p>18 Q. Do you know if Whitestone had standard form</p> <p>19 purchase order agreement Terms and Conditions in 2013?</p> <p>20 A. A standard form?</p> <p>21 Q. Yes.</p> <p>22 A. I do not think we had a standard where we</p> <p>23 used with every vendor, no.</p> <p>24 Q. If you can turn to what's been previously</p>	<p style="text-align: right;">Page 37</p> <p>1 Q. Because Whitestone is a family-owned company,</p> <p>2 I assume that the organization structure is kind of --</p> <p>3 isn't as extensive as other corporations. So below the</p> <p>4 president is the vice-president. Below the</p> <p>5 vice-president is who -- project manager?</p> <p>6 A. It would be project manager, project</p> <p>7 managers, project -- to me project manager and project</p> <p>8 executive is one in the same. So Phil would be</p> <p>9 considered either a project executive or project manager.</p> <p>10 Q. Okay. That big paragraph in the middle of</p> <p>11 the first page of Exhibit 4, read that to yourself down</p> <p>12 to the ("Vendors work").</p> <p>13 A. So from Yuanda Corporation with an address at</p> <p>14 36 --</p> <p>15 Q. Correct.</p> <p>16 A. -- blagh, blagh, blagh --</p> <p>17 Q. Correct.</p> <p>18 A. -- until?</p> <p>19 Q. About ten lines down.</p> <p>20 A. And "deliverable curtainwall system materials</p> <p>21 ("vendor's work")?</p> <p>22 Q. Correct.</p> <p>23 (Witness peruses document.)</p> <p>24 A. Okay.</p>

<p style="text-align: right;">Page 38</p> <p>1 Q. Okay. It's my understanding that that is the 2 definition of what -- of vendor's work or what Yuanda was 3 going to provide. Is my understanding correct, 4 incorrect?</p> <p>5 A. It's -- it's a list of -- of some of the -- 6 some of the scope that Yuanda needs to provide. Is it a 7 definitive, exhaustive list? No.</p> <p>8 Q. Okay. So where is the definitive, exhaustive 9 list of Yuanda's scope of work?</p> <p>10 A. It would be in the -- in the plans and specs 11 in conjunction with anything listed in -- in the purchase 12 order.</p> <p>13 Q. How would -- we'll get to that. We'll get to 14 that. Sorry. Strike that question.</p> <p>15 Is there any work that you wanted Yuanda to 16 perform that is not listed in this first paragraph above 17 vendor's work?</p> <p>18 MR. CARBONE: Objection to form. 19 BY MR. GILL:</p> <p>20 Q. Go ahead and answer, please.</p> <p>21 A. Say the question again because --</p> <p>22 Q. Is there any --</p> <p>23 A. -- I'm not sure how to --</p> <p>24 Q. Sorry. I stepped on your answer, and I did</p>	<p style="text-align: right;">Page 40</p> <p>1 approved?</p> <p>2 A. Provide -- provided that they provided 3 everything that is approved and acceptable to the 4 owner/architect/construction manager.</p> <p>5 Q. Are you aware of whether Whitestone inspected 6 the components after or upon delivery from Yuanda?</p> <p>7 A. I'm sorry but that's kind of -- that's kind 8 of a vague question. Am I aware if anybody from 9 Whitestone specifically looked at every piece of material 10 regarding anything that came from Yuanda? That's -- 11 that's difficult for me -- I can't say that.</p> <p>12 Q. Do you know if Whitestone was required to 13 inspect the material upon delivery from Yuanda?</p> <p>14 A. Well, Whitestone through its installer, yes, 15 probably -- we should have -- during -- during the normal 16 course of the contract, yes, we would -- if we noticed 17 something that was not proper, then we would have 18 notified them. If there was --</p> <p>19 Q. Well, isn't it --</p> <p>20 A. If there was an issue with the workmanship, 21 yes.</p> <p>22 Q. I apologize. I stepped on your answer again. 23 Isn't it a requirement that Yuanda or 24 Whitestone or its subcontractor inspect Yuanda's work and</p>
<p style="text-align: right;">Page 39</p> <p>1 exactly what I said that we need to do to keep a clear 2 record, and I apologize.</p> <p>3 Is there anything -- anything that is not 4 listed in that first paragraph above vendor's work that 5 you expected Yuanda to provide or perform for this 6 project?</p> <p>7 A. I -- I can't answer that because it really 8 goes into the details of the plans and specs, so I -- to 9 me that's a difficult question to answer if at all.</p> <p>10 Q. Was Yuanda required to provide any on-site 11 services?</p> <p>12 A. On-site services?</p> <p>13 Q. Yes.</p> <p>14 A. Not to my knowledge.</p> <p>15 Q. Was Yuanda required to provide any 16 installation services?</p> <p>17 A. Not to my knowledge.</p> <p>18 Q. Was Yuanda required to provide any service 19 after delivery of the fabricated components?</p> <p>20 A. Provided that everything was -- that was 21 provided was -- was approved, no.</p> <p>22 Q. And that approval came from who? Strike 23 that.</p> <p>24 What do you mean provided everything that was</p>	<p style="text-align: right;">Page 41</p> <p>1 reject components that fail to conform to the -- the 2 submittals or the shop drawings?</p> <p>3 A. If we would have -- if we were to inspect it, 4 it would happen by -- if we saw something, it would 5 happen by happenstance. It would not be -- I would not 6 say it's our job to make sure they conform with -- 7 with -- with their contract, no.</p> <p>8 Q. It's your job to make sure that the 9 clerestory conforms to your contract with Sciamé though; 10 right?</p> <p>11 A. It's -- repeat that one more time.</p> <p>12 Q. Is it your job, Whitestone's job, to ensure 13 that its work, Whitestone's work, conforms to the 14 requirements of the subcontract between Whitestone and 15 Sciamé?</p> <p>16 A. I would say it's the responsibility of 17 whomever we hire to perform that to design and 18 manufacture, to make sure it conforms.</p> <p>19 Q. That's not my question. Under your 20 subcontract with Sciamé do you have a responsibility to 21 Sciamé to make sure Whitestone is providing what 22 Whitestone agreed to provide?</p> <p>23 A. Strictly speaking between us, between 24 Whitestone and Sciamé, yes.</p>

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1 Q. And, for the record, you said that you,
 2 Whitestone, were providing all of the exterior cladding.
 3 This purchase order, this purchase order with Yuanda was
 4 only a portion of Whitestone's work on this project; is
 5 that accurate?
 6 A. Yeah, correct.
 7 Q. If you turn to the third page of Exhibit 4
 8 which is page 1102 through 1109.
 9 MR. CARBONE: What --
 10 BY MR. GILL:
 11 Q. What are --
 12 MR. CARBONE: Adam --
 13 MR. GILL: I can't hear you, Don.
 14 MR. CARBONE: Oh, sorry.
 15 MR. GILL: Not a problem.
 16 MR. CARBONE: It's muted. Adam, what -- I'm
 17 using a different Bates stamp document. What paragraph
 18 are you on?
 19 MR. GILL: I'm not on a paragraph. I didn't
 20 give you the -- it's the first -- it's the purchase
 21 agreement Terms and Conditions. I think it's --
 22 MR. CARBONE: Yeah, there's numbered
 23 paragraphs, 1, 2.
 24 MR. GILL: I'm not talking about a paragraph

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1 yet.
 2 MR. CARBONE: Oh, okay.
 3 MR. GILL: I'll let you know what paragraph
 4 I'm talking about.
 5 MR. CARBONE: Okay. Great. Thank you.
 6 Sorry.
 7 BY MR. GILL:
 8 Q. So what are on these eight or nine pages in
 9 Exhibit 4?
 10 A. Seems to be the Terms and Conditions of the
 11 purchase agreement.
 12 Q. Okay. What does that mean Terms and
 13 Conditions?
 14 A. That's pretty self-explanatory. It's all --
 15 this is all -- any terms listed in -- in this section
 16 is -- is part of our contract with Yuanda.
 17 Don --
 18 Q. Okay. Were the Terms and Conditions the
 19 subject of negotiations --
 20 THE WITNESS: I'm getting feedback. Don, can
 21 you mute?
 22 BY MR. GILL:
 23 Q. Were these Terms and Conditions the subject
 24 of any negotiations between Yuanda and Whitestone?

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1 A. Yes, they could have been. I'm not -- I
 2 don't remember specifically if -- what -- what Phil
 3 negotiated back and forth with Yuanda. I do not know
 4 that.
 5 Q. Do you know if these -- I think you said
 6 there were no standard Terms and Conditions in 2013. So
 7 these would have been drafted for this project; is that
 8 accurate?
 9 A. Probably, yes.
 10 Q. And you also said that you didn't have any
 11 negotiating power with Sciame because it was a public
 12 project?
 13 A. Yes.
 14 Q. Did you have -- were there any negotiations
 15 at all between Whitestone and Yuanda regarding these
 16 Terms and Conditions because it was a public project?
 17 A. Were there any negotiations between
 18 Whitestone and Yuanda --
 19 Q. Yeah.
 20 A. -- on -- regarding these terms and -- I do
 21 not know. I was not involved with negotiating this
 22 purchase order, so I don't -- I don't know.
 23 Q. If you look at paragraph 1, on the first page
 24 of the Terms and Conditions, the last sentence states:

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1 "No changes will be effective unless this purchase
 2 agreement is modified in writing by an authorized
 3 representative of subcontractor."
 4 A. Okay.
 5 Q. What does that language mean?
 6 A. That any verbal agreements between Whitestone
 7 and Yuanda are not -- are void unless it's been -- unless
 8 it's put in writing and signed by -- by a -- by an
 9 officer of the subcontractor.
 10 Q. Okay. What counts or what constitutes a
 11 change to the purchase agreement?
 12 A. Any change in the terms of conditions.
 13 That's the best answer I can give --
 14 Q. Okay.
 15 A. -- give you on that.
 16 Q. If you look at paragraph 2, about six lines
 17 down the sentence starts at the very end: "Vendor shall
 18 assume towards subcontractor." Do you see that?
 19 A. Yes.
 20 Q. And, for the record, the sentence states:
 21 "Vendor shall assume towards subcontractor all
 22 obligations and responsibilities which under contract
 23 documents as set forth in Whitestone purchase order
 24 Attachment B related to the curtainwall pertaining to the

<p style="text-align: right;">Page 46</p> <p>1 prime contract the subcontractor assumes toward 2 contractor and owner and architect/engineer." 3 A. Yes. 4 Q. That is similar to language I pointed out in 5 the Sciamme/Whitestone subcontract. Would you agree with 6 that? 7 A. Yes. 8 Q. But it's not identical. Do you agree with 9 that? 10 A. I don't -- I'd have to -- I would have to do 11 a word-to-word comparison of each sentence next to each 12 other to say that. 13 Q. Exhibit 5. 14 A. Okay. 15 MR. CARBONE: Adam -- excuse me. I have an 16 objection only because you stopped reading the sentence 17 in mid sentence and then you were asking about a 18 sentence. You failed to read the rest of the sentence 19 where it says: "And shall be bound by the rulings of 20 subcontractor, contractor and owner and 21 architect/engineer including but not limited to 22 extensions for time -- of time." 23 MR. GILL: Okay. 24 MR. CARBONE: That's the purpose of my</p>	<p style="text-align: right;">Page 48</p> <p>1 one more time, please. 2 BY MR. GILL: 3 Q. Okay. Do you see that Exhibit 4 has the 4 phrase "under the contract documents as set forth in 5 Whitestone purchase order Attachment B related to the 6 curtainwall" in it? That language has been added to the 7 purchase order that is not -- there's no similar 8 reference in the subcontract? 9 MR. CARBONE: Objection. 10 BY THE WITNESS: 11 A. "The contract documents as set forth in the 12 Whitestone purchase order Attachment B related to 13 curtainwall pertaining to the prime contract." Is that 14 what you're referring to? 15 BY MR. GILL: 16 Q. Yes. 17 A. You're saying -- you're asking that -- if -- 18 if those words are not in the Exhibit 5? 19 Q. I'm -- I'm saying you see that those words 20 are not or a similar reference is not included in Exhibit 21 5. 22 A. I don't -- I would have to read this entire 23 paragraph. 24 Q. Then go ahead and read the entire paragraph.</p>
<p style="text-align: right;">Page 47</p> <p>1 objection. 2 MR. GILL: Okay. 3 MR. CARBONE: Okay. 4 BY MR. GILL: 5 Q. If you can turn to Exhibit 5 -- have both 6 Exhibit 4 and Exhibit 5 in front of you -- and you look 7 at page 845 of Exhibit 5, at the very top paragraph, 8 2.1.1. And you see that in the purchase order the phrase 9 "under the contract documents as set forth in Whitestone 10 purchase order Attachment B related to the curtainwall" 11 has been added to basically what is in Exhibit 5. Do you 12 see that? 13 MR. CARBONE: Objection. 14 BY THE WITNESS: 15 A. I don't even know where -- where to begin 16 comparing one to the other, so I don't know what you 17 are -- 18 MR. GILL: You're on mute. 19 THE REPORTER: Excuse me. You're on mute. 20 You're on mute. 21 THE WITNESS: Donald, I think you need to -- 22 MR. GILL: Yeah. 23 BY THE WITNESS: 24 A. Yeah, I'm not sure. I mean -- repeat that</p>	<p style="text-align: right;">Page 49</p> <p>1 (Witness peruses document.) 2 A. No, the contract between Whitestone and 3 Sciamme doesn't make -- doesn't mention anything -- 4 anything regarding a purchase order between Whitestone 5 and Yuanda. 6 Q. But it also doesn't refer to curtainwall? 7 A. No. The curtainwall is part of the overall 8 contract, and the contract between Whitestone and Sciamme 9 refers to the entire contract. 10 Q. And the provision in Exhibit 5 doesn't refer 11 to any attachments? 12 A. No, it does not specify any attachments. 13 Q. Why does the purchase order -- why did 14 Whitestone include that reference to the attachments in 15 the purchase order? 16 A. Can I -- can I refer to Attachment B? 17 Q. We're getting there. I just want to know why 18 that -- that language was inserted in paragraph 2 on page 19 1102. 20 A. I have no idea. I can't answer that. 21 Q. So now, yes, please turn to page 1114 which 22 is a page titled Attachment B Contract Documents. 23 A. Okay. 24 Q. Do you know who created Attachment B?</p>

<p style="text-align: right;">Page 50</p> <p>1 A. I do not know.</p> <p>2 Q. Do you know if it was Yuanda or Whitestone?</p> <p>3 A. I do not know.</p> <p>4 Q. Do you see that item 1 says: "The contract</p> <p>5 documents on Attachment B"?</p> <p>6 A. Yes.</p> <p>7 Q. And do you see that in or under -- listed</p> <p>8 under item 1 the prime contract is not listed?</p> <p>9 (Witness peruses document.)</p> <p>10 A. No, it's not listed in -- in Attachment B,</p> <p>11 no.</p> <p>12 Q. Do you see that the subcontract between</p> <p>13 Sciamme and Whitestone is not listed in Attachment B?</p> <p>14 A. No, it doesn't -- it doesn't specify that</p> <p>15 either.</p> <p>16 Q. Do you know why the prime contract and</p> <p>17 subcontract were not listed in Attachment B?</p> <p>18 A. Why they were not listed on Attachment B? I</p> <p>19 do not know.</p> <p>20 Q. Did you intend or did Whitestone intend that</p> <p>21 the prime contract be incorporated into the purchase</p> <p>22 order?</p> <p>23 A. Yes.</p> <p>24 Q. Did you or Whitestone intend that the prime</p>	<p style="text-align: right;">Page 52</p> <p>1 between the owner and subcontractor are incorporated</p> <p>2 herein by the reference to the extent that the prime</p> <p>3 contract applies to the work under this purchase order."</p> <p>4 That's the first --</p> <p>5 Q. Okay. The reference -- what is the purpose</p> <p>6 of the reference to Attachment B then in that sentence</p> <p>7 you just read?</p> <p>8 A. What is the? I'm sorry?</p> <p>9 Q. The sentence you just read refers to</p> <p>10 Attachment B; correct?</p> <p>11 A. "Contract documents as set forth in</p> <p>12 Whitestone --" okay.</p> <p>13 Q. Not okay. Yes or no. What you just --</p> <p>14 A. Yes.</p> <p>15 Q. -- read refers to Attachment B?</p> <p>16 Okay. Attachment B does not refer to the</p> <p>17 prime contract; correct?</p> <p>18 A. No. It refers to the contract documents.</p> <p>19 Q. It lists the contract documents; correct? It</p> <p>20 defines the contract documents?</p> <p>21 MR. CARBONE: Objection.</p> <p>22 BY THE WITNESS:</p> <p>23 A. Attachment B, yes. Referring to, yes, to the</p> <p>24 sentence that I just read, yes.</p>
<p style="text-align: right;">Page 51</p> <p>1 contract be incorporated into the purchase order?</p> <p>2 A. Yes.</p> <p>3 Q. Do you know why the prime contract and the</p> <p>4 subcontract are not specifically listed or incorporated</p> <p>5 into the purchase order?</p> <p>6 A. Why the -- can you say that one again?</p> <p>7 Q. Do you know why the purchase order is not</p> <p>8 incorporated into -- sorry. Strike that.</p> <p>9 Do you know why the prime contract is not</p> <p>10 incorporated into the purchase order?</p> <p>11 A. I believe --</p> <p>12 MR. CARBONE: Objection.</p> <p>13 MR. GILL: Okay.</p> <p>14 MR. CARBONE: Objection.</p> <p>15 BY MR. GILL:</p> <p>16 Q. Mr. Carbone objected. Please answer.</p> <p>17 A. I believe it is.</p> <p>18 Q. How? Where?</p> <p>19 A. I believe I've --</p> <p>20 (Witness peruses document.)</p> <p>21 On paragraph 2 of the purchase agreement</p> <p>22 Terms and Conditions it says: "The contract documents as</p> <p>23 set forth in Whitestone purchase order Attachment B</p> <p>24 related to curtainwall pertaining to the prime contract</p>	<p style="text-align: right;">Page 53</p> <p>1</p> <p>2 BY MR. GILL:</p> <p>3 Q. So moving on to the --</p> <p>4 MR. CARBONE: I was on mute. Adam, I was on</p> <p>5 mute. I just want to make sure my objection was noted.</p> <p>6 I'm sorry.</p> <p>7 MR. GILL: I could -- I could hear you and</p> <p>8 that's why I kept going.</p> <p>9 Madam Court Reporter, when Mr. -- even</p> <p>10 though he's muted, when Mr. Carbone objects, can you --</p> <p>11 are you -- can you hear that? Are you recognizing that?</p> <p>12 Are you I guess noting it?</p> <p>13 THE REPORTER: Yes, I can hear him. Thank</p> <p>14 you.</p> <p>15 MR. GILL: Okay. I just want to make sure --</p> <p>16 Don, I just want to make sure we have a clean record, and</p> <p>17 I'm not trying to do end run around your objections.</p> <p>18 BY MR. GILL:</p> <p>19 Q. Okay. Getting back to the purchase order,</p> <p>20 you said that Whitestone intended that the subcontract be</p> <p>21 incorporated into the purchase order. Do you know why it</p> <p>22 was not?</p> <p>23 A. Well, I don't --</p> <p>24 MR. CARBONE: Objection.</p>

<p style="text-align: right;">Page 54</p> <p>1</p> <p>2 BY THE WITNESS:</p> <p>3 A. I don't -- I don't agree with that statement</p> <p>4 you just made, so I mean there's tons of paperwork here.</p> <p>5 If you want me to -- if you want to wait -- if everybody</p> <p>6 wants to wait a few hours for me to go review it to look</p> <p>7 for it, then so be it.</p> <p>8 BY MR. GILL:</p> <p>9 Q. I will represent that there is one reference</p> <p>10 to the subcontract and that is the first line, actually</p> <p>11 the second line of article 2 that says: "Vendor</p> <p>12 acknowledges that subcontractor has entered into a</p> <p>13 subcontract with F.J. Sciamme Construction Company,</p> <p>14 Incorporated for the specified work at the CUNY NYCCT New</p> <p>15 Academic Building located at," and it goes on. That's</p> <p>16 the only reference to subcontract in the purchase order.</p> <p>17 A. Okay.</p> <p>18 Q. You can read the entire document. I have</p> <p>19 seven hours. I have no problem with that.</p> <p>20 MR. CARBONE: All right. Well, I guess we</p> <p>21 both have seven hours if necessary, but I'm going to</p> <p>22 object to counsel's characterization because you're going</p> <p>23 into legal argument.</p> <p>24 MR. GILL: Fair enough.</p>	<p style="text-align: right;">Page 56</p> <p>1 Conditions of the purchase order, page 1105, paragraph D,</p> <p>2 there's a subparagraph that's not numbered that says</p> <p>3 "Inspection and Defective Work." Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. The second sentence in that subparagraph</p> <p>6 reads: "Vendor shall promptly prepare the plan for the</p> <p>7 approval of the subcontractor in order to replace or</p> <p>8 correct any vendor's work which contractor shall reject</p> <p>9 as failing to conform to the requirements of the purchase</p> <p>10 order and/or contract documents whether rejected before</p> <p>11 or after installation with inclusion -- sorry -- with</p> <p>12 exclusion of those specified in item B listed below." Do</p> <p>13 you know who wrote that requirement or term in this Terms</p> <p>14 and Conditions?</p> <p>15 A. I do not know.</p> <p>16 Q. Do you know if that was the subject of any</p> <p>17 negotiations between Whitestone and Yuanda?</p> <p>18 A. I do not know.</p> <p>19 Q. Okay. There's a lot in there, and I'm going</p> <p>20 to break it apart so we can address it in pieces.</p> <p>21 In your experience, how common is it to</p> <p>22 replace work that was properly performed the first time?</p> <p>23 A. Properly performed?</p> <p>24 Q. Yes.</p>
<p style="text-align: right;">Page 55</p> <p>1</p> <p>2 BY MR. GILL:</p> <p>3 Q. As far as you are aware, sitting here without</p> <p>4 reading the entire document, Exhibit 4, is there a</p> <p>5 location in the purchase order that incorporates the</p> <p>6 subcontract between Whitestone and Sciamme?</p> <p>7 MR. CARBONE: Okay. I'm going to -- I'm going</p> <p>8 to object because you asked him that question previously.</p> <p>9 He told you it did. You asked him where, and he told you</p> <p>10 where.</p> <p>11 MR. GILL: That was on the prime contract.</p> <p>12 I'm talking about the subcontract. He said he didn't</p> <p>13 know where on the subcontract and if we wanted to read</p> <p>14 the entire document, he would do that, and so I want to</p> <p>15 know if he knows sitting here without reading the entire</p> <p>16 document where the reference to the subcontract is not</p> <p>17 the prime contract.</p> <p>18 MR. CARBONE: Objection withdrawn.</p> <p>19 MR. GILL: You can still object. That's fine.</p> <p>20 BY THE WITNESS:</p> <p>21 A. Off the top of my head, no, I can't answer</p> <p>22 that.</p> <p>23 BY MR. GILL:</p> <p>24 Q. Okay. If you turn back to the Terms and</p>	<p style="text-align: right;">Page 57</p> <p>1 A. I don't -- extremely, extremely rare.</p> <p>2 Q. Can you recall any time you have ever asked a</p> <p>3 vendor to replace work that was properly performed?</p> <p>4 A. No.</p> <p>5 Q. Would you agree that in order to "correct"</p> <p>6 work that work needs to have some kind of defect or</p> <p>7 something improper in it?</p> <p>8 A. Yes.</p> <p>9 Q. Do you agree that the sentence that I just</p> <p>10 read requires that Whitestone reject Yuanda's work?</p> <p>11 A. No, that's not my interpretation of that, no.</p> <p>12 Q. Okay. For the record, the part I'm referring</p> <p>13 to, it says: "In order to replace or correct any</p> <p>14 vendor's work which subcontractor shall reject." You --</p> <p>15 is it your opinion that someone other than Whitestone has</p> <p>16 the authority to reject Yuanda's work?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. How do you reach that conclusion?</p> <p>19 A. Because it's in Whitestone's contract that</p> <p>20 the owner/architect/construction manager has the right to</p> <p>21 reject our work and by extension any work -- the work of</p> <p>22 any subcontractors or vendors by Whitestone.</p> <p>23 Q. Are you aware of anyplace in the purchase</p> <p>24 order where that same requirement is included?</p>

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1 A. Like my lawyer previously mentioned, I guess
 2 that's a legal argument between you and him.
 3 Q. I'm only -- are you aware as a layman of
 4 anyplace in that -- in the purchase order where that same
 5 requirement is stated?
 6 A. Off the top of my head, no.
 7 Q. Right after the part that I just read states:
 8 Rejection is based on "failing to conform to the
 9 requirements of the purchase order and/or contract
 10 documents." I'm not asking for a legal conclusion, but
 11 do you know what that means?
 12 A. Repeat that.
 13 Q. The second part or actually the middle part
 14 of that sentence states that: Rejection is quote or
 15 based on "failing to conform to the requirements of the
 16 purchase order and/or contract documents."
 17 A. Yes. You're asking me what that means?
 18 Q. Yes.
 19 A. Well, if the -- basically if -- if the work
 20 does not conform to the -- to the Terms and Conditions of
 21 the purchase order and/or the contract documents.
 22 Q. Well, how does something not conform? Does
 23 it have to be defective?
 24 A. If it does not follow the contract -- the

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1 plans and specs of the contract, yes, defective --
 2 Q. Can properly --
 3 A. -- in that way.
 4 Q. I'm sorry. I stepped on your answer again.
 5 Can properly performed work fail to conform
 6 to the requirements of the purchase order and/or contract
 7 documents?
 8 A. I guess no. That be a contradiction.
 9 Q. The next two sentences state: "Upon approval
 10 of the vendor's plan by subcontractor, vendor shall
 11 promptly replace or correct any vendor's work. If vendor
 12 does not do so within a reasonable time, subcontractor
 13 shall have the right to do so and vendor shall be liable
 14 to subcontractor for the costs thereof." Do you know who
 15 wrote that -- Whitestone or Yuanda?
 16 A. I -- I can't tell you for sure.
 17 Q. Okay. And, again, you don't know if that was
 18 the subject of negotiations between Whitestone and
 19 Yuanda?
 20 A. No.
 21 Q. What does -- do you know what means --
 22 what -- the last part of the sentence where it says:
 23 "Vendor shall be liable to subcontractor for the costs
 24 thereof," what does thereof refer to?

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1 A. Let me -- can I -- give me a second to find
 2 that sentence --
 3 Q. Absolutely.
 4 A. -- so I could read it.
 5 Q. That's five and six lines up from the bottom.
 6 A. Okay. So you're talking about: "Upon
 7 approval of vendor's plan, vendor shall promptly replace
 8 or correct any vendor's work. If vendor does not do so
 9 within a reasonable time, subcontractor shall have the
 10 right to do so and vendor shall be liable to
 11 subcontractor for the costs thereof." Is that what
 12 you're referring to?
 13 Q. Exactly. I want to -- I want clarification
 14 or your understanding of what the costs thereof refers
 15 to. Does it refer to vendor's work or does it refer to
 16 something else?
 17 A. Any costs associated with -- of -- what's the
 18 term -- remediating or fixing work originally the
 19 responsibility of the vendor.
 20 Q. What is that conclusion based on?
 21 A. I don't understand your question.
 22 Q. Well, that language that you just in your
 23 answer said, the -- any cost related to the remediation
 24 is not included in this paragraph, so I want to know how

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1 you made that -- came to that conclusion that any cost
 2 incurred during the remediation is the responsibility of
 3 the vendor.
 4 MR. CARBONE: Objection to the
 5 characterization of the witness's testimony.
 6 BY MR. GILL:
 7 Q. Please answer.
 8 A. That's just my -- my interpretation of the
 9 English language. I don't know how else to say that.
 10 Q. Okay. If you turn to page 1110 in Exhibit 4,
 11 the page titled "Scope of Worksheet Attachment A." What
 12 is Attachment A?
 13 A. Well, I'm on page 1110 but where does --
 14 where is --
 15 Q. Isn't that the top -- doesn't it say "Scope
 16 of Worksheet Attachment A"?
 17 A. Oh, at the very top, yeah.
 18 Q. What is this Attachment A?
 19 A. It's a list of the scope of work. A
 20 generalization, a list of scope of work.
 21 Q. For whom?
 22 A. It appears for Yuanda to provide Whitestone
 23 Construction.
 24 Q. Do you know who created this chart?

<p style="text-align: right;">Page 62</p> <p>1 A. No. Specifically, no.</p> <p>2 Q. At the top of that page about four lines down</p> <p>3 it says: "Spec Section 084413, 084426 and 088000</p> <p>4 curtainwall." Do you know what that refers to?</p> <p>5 A. Specifications in the contract between</p> <p>6 Whitestone and Sciame.</p> <p>7 Q. Do you know why only those three</p> <p>8 specifications are listed?</p> <p>9 A. Specifically why? No, I don't know why.</p> <p>10 Maybe those were the only specifications relative to</p> <p>11 Yuanda's work. I can't -- I can't say yes or no</p> <p>12 definitively.</p> <p>13 Q. Okay. The first item, first line item in</p> <p>14 this chart lists those same three specifications and</p> <p>15 "related sections." Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. Do you know why it lists related sections?</p> <p>18 A. Because sometimes in specific specification</p> <p>19 sections it can make references to other specification</p> <p>20 sections.</p> <p>21 Q. How would any vendor or Yuanda specifically</p> <p>22 know what section, specification section, related section</p> <p>23 they are responsible for?</p> <p>24 A. Because any -- it would list -- in the spec</p>	<p style="text-align: right;">Page 64</p> <p>1 A. I'm sorry. It was 22, 23?</p> <p>2 Q. And 24.</p> <p>3 A. Yes.</p> <p>4 Q. And what are these exhibits?</p> <p>5 A. These are the technical specifications for</p> <p>6 the work that Yuanda --</p> <p>7 Q. For the curtainwall?</p> <p>8 A. Yes, for the curtainwall. For the -- yes.</p> <p>9 Q. That is at least part of Yuanda's scope of</p> <p>10 work?</p> <p>11 A. Correct. Yes.</p> <p>12 Q. Okay. Looking just at Exhibit 22, do you see</p> <p>13 the first page there is Section 1.02, Summary</p> <p>14 subparagraph C?</p> <p>15 A. Yes.</p> <p>16 Q. And C is "Related Sections Include the</p> <p>17 Following," and then it lists eight different</p> <p>18 specification sections?</p> <p>19 A. Yes.</p> <p>20 Q. And your prior testimony and the testimony of</p> <p>21 Mr. Dearth was Yuanda would know their entire scope of</p> <p>22 work by or could know their entire scope of work by</p> <p>23 looking at the related sections that are referenced in</p> <p>24 the technical specifications that are listed in their</p>
<p style="text-align: right;">Page 63</p> <p>1 sections that are specifically listed here, it would make</p> <p>2 a reference to another specification section.</p> <p>3 Q. If you can look at -- we've been going for a</p> <p>4 little more than an hour. We can take a break. I'm not</p> <p>5 changing topics, but it might be a good time for a break</p> <p>6 if you need one, Don or Mr. Grzic.</p> <p>7 THE WITNESS: If you want, I'm fine. I can</p> <p>8 use a bathroom break.</p> <p>9 MR. GILL: Okay. That's fine. So about a</p> <p>10 five-minute break.</p> <p>11 THE VIDEOGRAPHER: Off the record, 10:23.</p> <p>12 (WHEREUPON, a break was</p> <p>13 taken.)</p> <p>14 We're back on the record at 10:33.</p> <p>15 BY MR. GILL:</p> <p>16 Q. Okay. If you can take a look at Exhibits 22,</p> <p>17 23 and 24.</p> <p>18 For the record, Exhibit 22 is a specification</p> <p>19 Section 084413, Glazed Aluminum Curtainwalls. Exhibit 23</p> <p>20 is Section 084426, Structural Glass Curtainwalls, and</p> <p>21 Exhibit 24 is Specification Section 088000, Glazing.</p> <p>22 Do you recognize Exhibits 22, 23 and 24?</p> <p>23 A. Hold on one second.</p> <p>24 Q. Yep.</p>	<p style="text-align: right;">Page 65</p> <p>1 purchase order? Is that accurate or pretty close?</p> <p>2 A. Yes.</p> <p>3 MR. CARBONE: Objection. Objection to form.</p> <p>4 BY MR. GILL:</p> <p>5 Q. Okay. Was that accurate?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. Looking at that 1.02 sub C, Yuanda</p> <p>8 wasn't responsible for the sustainable design</p> <p>9 requirements; is that true?</p> <p>10 A. Where is that? I'm sorry. Where's --</p> <p>11 Q. 1.02 C 1.</p> <p>12 A. Okay. I -- sustainable design requirements.</p> <p>13 I cannot say yes or no. I don't know.</p> <p>14 Q. Okay.</p> <p>15 A. I can't -- I can't --</p> <p>16 Q. Was Yuanda responsible for thermal</p> <p>17 insulation?</p> <p>18 A. I -- again, I can't tell -- I can't say</p> <p>19 definitively yes or no they were not responsible for it.</p> <p>20 Q. Was Yuanda responsible for hollow clay tile</p> <p>21 cladding systems?</p> <p>22 A. Not, not that I know. Not that I -- I can't</p> <p>23 say definitively yes or no.</p> <p>24 Q. How would anyone know definitively yes or no</p>

<p style="text-align: right;">Page 66</p> <p>1 by looking at the purchase order what work Yuanda was 2 responsible for?</p> <p>3 A. Well, it would -- the purchase order said -- 4 referred this spec Section 084413, and this spec section 5 refers to other -- to other spec sections, and if you go 6 through the actual technical specifications, it can 7 make -- it can refer to information that's listed -- it 8 can refer to information that's required to perform or 9 complete 084413. It can require information that's 10 listed in these other spec sections that you -- that you 11 just referred to. So I -- I can't specifically say what 12 it is, what it refers to, but that's why -- that's why 13 paragraph 102 C exists.</p> <p>14 Q. I understand. How would someone know what 15 Yuanda's actual scope of work is by looking at the 16 purchase order in the specifications? Would they have to 17 read the entire project manual?</p> <p>18 A. No. They would have to read Section -- when 19 it comes to any work covered under Section 084413, they 20 would have to read the entire spec section and see if any 21 references to any information is -- is made to any of the 22 spec sections referred to in Section 1.02 C.</p> <p>23 Q. Looking back at Attachment A to the purchase 24 order, Exhibit 4, look at line item 6. This references</p>	<p style="text-align: right;">Page 68</p> <p>1 A. System design per Yuanda proposal drawings, 2 yes.</p> <p>3 Q. So was -- as far as you know, was Yuanda's 4 design of the system based on specific criteria?</p> <p>5 A. Yuanda's system was -- is supposed to be 6 based upon the plans and specifications, the requirements 7 listed in the plans and specifications.</p> <p>8 Q. Are there -- do the plans and specifications 9 include criteria that Yuanda was to use in forming its 10 design?</p> <p>11 A. Yes. It should, yes.</p> <p>12 Q. It should but did it?</p> <p>13 A. I -- I -- I never referred to any -- I never 14 reviewed any of the plans and specifications to know.</p> <p>15 Q. Do you know if Whitestone provided Yuanda 16 with the -- Strike that.</p> <p>17 Who provided Yuanda with the drawings and 18 specifications?</p> <p>19 A. That would have been my project manager. 20 Probably -- most likely Phil Carvelas.</p> <p>21 Q. Do you know if someone from Whitestone 22 provided Yuanda with anything other than the drawings and 23 specifications that relate to design criteria?</p> <p>24 A. I wouldn't -- I can't say definitively. I</p>
<p style="text-align: right;">Page 67</p> <p>1 Yuanda's proposal drawings. Are you -- do you recall 2 whether Yuanda provided proposal drawings to Whitestone?</p> <p>3 A. Specifically I do not -- I'm not aware.</p> <p>4 Q. You see in the right hand column -- it 5 appears to me that there's a typo on one of the dates 6 because the third date down is November 25th, 2013, but 7 this purchase order is dated October 24th, 2013. Should 8 that refer to November 25th, 2012?</p> <p>9 A. I -- I do not know. I can't say that. Not 10 necessarily.</p> <p>11 Q. Line item 9 says that Yuanda's scope of work 12 included system design engineering. Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. Do you know what that means specifically?</p> <p>15 A. Specifically coming up with the -- the 16 working -- the drawings and the design of the system 17 along with all the calculations, the support that 18 everything -- everything -- everything confers to the -- 19 what's -- sorry. I'm having a brain freeze. And to 20 confirm with the calculations that everything conforms to 21 the plans and specifications.</p> <p>22 Q. Okay. And, again, turn the page to WCC1111, 23 line item 38. Again refers to proposal drawings but also 24 system design. Do you see that?</p>	<p style="text-align: right;">Page 69</p> <p>1 have no idea.</p> <p>2 Q. I want to talk about the term deflection for 3 a minute. It's my understanding in my discussion with 4 Mr. Dearth -- I believe he agrees -- there are two kinds 5 of deflection. There's deflection within a building 6 component. In this case, the curtainwall system. The 7 individual members deflect; is that accurate?</p> <p>8 A. Yes.</p> <p>9 Q. And then there's also overall building 10 movement; is that accurate?</p> <p>11 A. Okay. Yes.</p> <p>12 Q. Well, do you agree with that or disagree with 13 that?</p> <p>14 A. Yeah. It depends -- I guess you can always 15 break it down even further, but I would agree with those, 16 yeah.</p> <p>17 Q. Okay. If you look back to Exhibit 22, the 18 Glazed Aluminum Curtainwall Specification.</p> <p>19 A. Okay.</p> <p>20 Q. Turn to Page 2 which is WCC11789. There is a 21 Section 1.03 Performance Requirements A 3. Do you see 22 that?</p> <p>23 A. Yes.</p> <p>24 Q. Actually, before we look at A 3, turn to the</p>

<p style="text-align: right;">Page 70</p> <p>1 next page. It would be a numbered subparagraph under 1.3</p> <p>2 D, Deflection of Framing Members. Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. Generally speaking --</p> <p>5 MR. CARBONE: I don't see it. Adam, could you</p> <p>6 just get me where you were?</p> <p>7 MR. GILL: Yeah. Page number 11790.</p> <p>8 MR. CARBONE: D, Deflection?</p> <p>9 MR. GILL: D, as in dog.</p> <p>10 MR. CARBONE: Thank you.</p> <p>11 BY MR. GILL:</p> <p>12 Q. Are you familiar with, generally familiar</p> <p>13 with the format of this specification?</p> <p>14 A. I'm sorry. That's a very vague question.</p> <p>15 Q. Sorry. You're muted.</p> <p>16 A. Sorry. That's a very vague question. What</p> <p>17 do you mean familiar with?</p> <p>18 Q. Well, typically construction projects use</p> <p>19 Master Spec or some other specification writing program;</p> <p>20 right?</p> <p>21 A. Okay. Yes.</p> <p>22 Q. Are you familiar with that?</p> <p>23 A. Yes.</p> <p>24 Q. And so this is a standard specification that</p>	<p style="text-align: right;">Page 72</p> <p>1 curtainwall components?</p> <p>2 A. Well, if it's in this spec section, it would</p> <p>3 be referring to any -- any deflection referring to the</p> <p>4 member of -- any -- sorry. If it's in this</p> <p>5 specification, it would refer to any deflection of the</p> <p>6 components of this -- of the glazed aluminum curtainwall.</p> <p>7 Q. Okay. If you now turn back to page 11789,</p> <p>8 1.03 A sub 3 and that --</p> <p>9 A. So 103 B 3?</p> <p>10 Q. A 3. 103 A 3.</p> <p>11 A. 103 A 3. Okay.</p> <p>12 Q. And that states: "Movements of supporting</p> <p>13 structure indicated on drawings including but not limited</p> <p>14 to story drift, twist, column shortening, long-term creep</p> <p>15 and deflection from uniformly distributed and</p> <p>16 concentrated live loads." Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. Do you know what that means?</p> <p>19 A. Yes, that they're supposed to -- when</p> <p>20 designing the system, they're supposed to just take into</p> <p>21 account movements of supporting structure indicated on</p> <p>22 the drawings included but not limited to story drift,</p> <p>23 twist, column shortening, long-term creep and deflection</p> <p>24 from uniformly distributed and concentrated live loads.</p>
<p style="text-align: right;">Page 71</p> <p>1 is edited by the architect for a specific project;</p> <p>2 correct?</p> <p>3 A. Yeah, I can't answer whether this architect</p> <p>4 used a standard format then just edited it or started</p> <p>5 this from scratch. I -- I can't say that. I don't know.</p> <p>6 Q. But the format is pretty standard. Like part</p> <p>7 1 is General. Part 2 is Execution. Part 3 is</p> <p>8 Performance or something like that?</p> <p>9 A. Yes. Yes. In that --</p> <p>10 Q. So are you familiar --</p> <p>11 A. -- sense, yes.</p> <p>12 Q. Sorry. I'm talking over your answer.</p> <p>13 Are you familiar with the requirement in a</p> <p>14 curtainwall specification of deflection of framing</p> <p>15 members generally speaking?</p> <p>16 A. Yes, generally speaking.</p> <p>17 Q. So on Page 11790, paragraph D what is</p> <p>18 generally listed? I don't want specifics, but what is</p> <p>19 your understanding of what's generally listed in that</p> <p>20 paragraph?</p> <p>21 A. The deflections of different members of the</p> <p>22 building.</p> <p>23 Q. Well, this relates -- does it relate to the</p> <p>24 building or the maximum allowable deflection of the</p>	<p style="text-align: right;">Page 73</p> <p>1 Q. Are you aware of anywhere in any of the</p> <p>2 specifications where the architect gives a maximum amount</p> <p>3 of building movement, deflection or deformation?</p> <p>4 A. Can you say that one more time?</p> <p>5 Q. Related to the specification only are --</p> <p>6 A. Yes.</p> <p>7 Q. -- you aware of any place in the</p> <p>8 specification, any specification, where the architect or</p> <p>9 engineer of record provides an amount, a maximum amount</p> <p>10 for building movement, deflection or deformation?</p> <p>11 A. In the specifications or in the contract</p> <p>12 documents?</p> <p>13 Q. Specifications.</p> <p>14 A. In the -- not that I am aware of in the</p> <p>15 specifications, no.</p> <p>16 Q. In the architectural or structural drawings</p> <p>17 are you aware of the location where the architect gives,</p> <p>18 architect or engineer of record gives an amount for</p> <p>19 building movement, deflection or deformation for the</p> <p>20 building?</p> <p>21 A. Yes.</p> <p>22 Q. Where?</p> <p>23 A. I don't know off the top of my head. I</p> <p>24 believe it's one of the structural -- structural drawings</p>

<p style="text-align: right;">Page 74</p> <p>1 where it does list a deflection. I don't -- off the top 2 of my head I do not know -- remember which drawing. 3 Q. Is it -- I will represent -- I wasn't going 4 to show you today -- there is a drawing called S003. 5 Does that ring a bell? 6 A. I believe that that could be the -- the 7 drawing that -- 8 MR. CARBONE: Adam -- 9 THE WITNESS: Sorry. 10 MR. CARBONE: Hold on. Adam, I have a copy of 11 that drawing if you'd like to provide it to the witness. 12 MR. GILL: No, maybe not because I -- 13 depending on my follow-up. 14 BY MR. GILL: 15 Q. Are you aware of whether the maximum 16 deflection is listed in more than one place in the 17 architectural or structural drawings? 18 A. I am not aware. 19 Q. Okay. 20 MR. GILL: No, Don, thank you, I don't need 21 that document. 22 BY MR. GILL: 23 Q. You can put the specifications to the side. 24 And if you can look at the document that was previously</p>	<p style="text-align: right;">Page 76</p> <p>1 components. Is that an accurate understanding of this? 2 A. Yes, they're ask -- yes. 3 Q. And so it's my understanding also that Sciamé 4 is not questioning whether Whitestone installed the WT-3 5 properly; is that an accurate -- 6 A. They -- they do not mention any of that. 7 They do not mention that. 8 Q. And, likewise, Sciamé doesn't mention that 9 it's questioning the design of the WT-3; is that 10 accurate? 11 A. It's -- repeat that question, please. 12 Q. Also Sciamé doesn't indicate whether it's 13 questioning the design of the WT-3 clerestory? 14 A. Can I have a chance to read it again? 15 Q. Absolutely. 16 (Witness peruses document.) 17 A. In a way it is inferring that it is 18 questioning the design in my opinion. 19 Q. If it was questioning the design, wouldn't 20 Sciamé be sending you or Whitestone the RFI or a question 21 or a direction for Whitestone or Yuanda to explain its 22 design? 23 MR. CARBONE: Objection. 24</p>
<p style="text-align: right;">Page 75</p> <p>1 marked as Exhibit 6. 2 A. Okay. 3 Q. Do you recognize this document? 4 A. This is an RFI. 5 Q. And, for the record, what is an RFI? 6 A. RFI stands for request for information. This 7 seems to be an answer from the architect to an RFI. 8 Q. Okay. Do you recall the first time you saw 9 the RFI from Sciamé? 10 A. Vividly, no. Like when, no. I mean I 11 remember seeing this before, but I -- when or where I 12 don't -- I can't answer that. 13 Q. The reason I'm asking is you said generally 14 you're not involved in the day-to-day operations but at 15 some point this project had a lot of questions or 16 problems or concerns, I don't remember your exact words, 17 and so you became -- you came to be copied on a lot of 18 e-mails. Do you know if it was about this time or 19 sometime after January 2017? 20 A. It was about this time, give or take months I 21 would -- 22 Q. It's my understanding from this RFI, the 23 original RFI not the response, that Sciamé is asking the 24 architect to define the relative movement of the building</p>	<p style="text-align: right;">Page 77</p> <p>1 BY THE WITNESS: 2 A. Not necessarily. 3 BY MR. GILL: 4 Q. Do you recall the first time you saw -- or 5 what was the first time you recall seeing the response to 6 this RFI? 7 A. Do I remember when I first -- okay. Ask the 8 question. I'm sorry. 9 Q. Sorry. That was a bad question. I changed 10 in mid sentence. 11 When is the first time you recall seeing the 12 response? 13 A. I don't remember. I would have to -- 14 within -- if I had to guess, it would be within two, 15 three months of this, of the date of this RFI. 16 Q. Do you agree -- Strike that. 17 Are you aware that the architect or its 18 consultant is claiming that the maximum roof deflection 19 at the WT-3 clerestory is 3.4 inches? 20 A. Yes, I am aware of that. 21 Q. Do you agree with that? 22 A. I'm -- I am not the designer of the building. 23 Only the designer of the building would be able to answer 24 that. I did not design the building nor am I qualified</p>

<p style="text-align: right;">Page 78</p> <p>1 to calculate that movement, so . . .</p> <p>2 Q. Did you or Whitestone do anything to verify</p> <p>3 the movement would be 3.4 inches?</p> <p>4 A. I guess my previous answer still applies.</p> <p>5 It's not Whitestone's -- Whitestone does not have the</p> <p>6 authority or the -- or the -- Whitestone does not have</p> <p>7 the authority or the qualifications to -- to do that.</p> <p>8 We're not the designers of the building. Only the</p> <p>9 designers of the building who can take into account the</p> <p>10 entire building design are able to do that.</p> <p>11 Q. So from your answer, I take it that</p> <p>12 Whitestone did nothing to confirm whether the architect</p> <p>13 is correct or the consultant is correct?</p> <p>14 A. It's -- it's not our place. We would have no</p> <p>15 standing to -- to question that.</p> <p>16 Q. I'm not asking if you had standing. I'm</p> <p>17 asking if you did anything to confirm it.</p> <p>18 A. That -- I -- not that I'm aware of because we</p> <p>19 would have no standing. We are not -- we are not the</p> <p>20 ones who signed off on the -- on the building design.</p> <p>21 Q. Whitestone -- does Whitestone agree or</p> <p>22 disagree with Sciamé that the WT-3 does not accommodate</p> <p>23 that kind of movement as originally installed?</p> <p>24 A. Does Whitestone -- say that one more time,</p>	<p style="text-align: right;">Page 80</p> <p>1 Q. Are you familiar with the shop drawings for</p> <p>2 the WT-3 curtainwall system?</p> <p>3 A. Not intimately but I have seen them.</p> <p>4 Q. Did you or anyone look at them when</p> <p>5 Whitestone provided them, at the original time that</p> <p>6 Whitestone provided them, either the initial submission</p> <p>7 or the revised submission?</p> <p>8 A. At what -- say that one more time, please.</p> <p>9 Q. Did you or anyone at Whitestone look at or</p> <p>10 review Yuanda's original submission and revised</p> <p>11 submission for the shop drawings?</p> <p>12 A. I cannot say. I know I did not. At the time</p> <p>13 of submission and resubmission I know I did not. Can I</p> <p>14 say --</p> <p>15 Q. Did you look -- sorry.</p> <p>16 A. I cannot -- I cannot say if anybody else did</p> <p>17 or did not from Whitestone.</p> <p>18 Q. Have you personally ever looked at the</p> <p>19 original submission or the revised submission at any</p> <p>20 time?</p> <p>21 A. When this issue did come up, then that's when</p> <p>22 I reviewed it.</p> <p>23 Q. Okay. Why did you look at the shop drawings?</p> <p>24 A. I just wanted to get the information for</p>
<p style="text-align: right;">Page 79</p> <p>1 please.</p> <p>2 Q. Does Whitestone agree or disagree with Sciamé</p> <p>3 that the WT-3 clerestory as originally installed does not</p> <p>4 accommodate sufficient building movement?</p> <p>5 A. If the architect of record states that</p> <p>6 the -- that the building movement or deflection is the</p> <p>7 three -- three inches -- I'm sorry. What was it -- three</p> <p>8 inches -- the three plus inches, if they state that is</p> <p>9 the movement criteria, then no, the system does not</p> <p>10 con -- does not take into account that -- that movement,</p> <p>11 no.</p> <p>12 Q. How do you know it doesn't take into account</p> <p>13 that movement?</p> <p>14 A. I've seen the original shop drawings and the</p> <p>15 calculations which take -- which take into account the</p> <p>16 original -- which take into account a different movement</p> <p>17 criteria.</p> <p>18 Q. And Whitestone is accepting as accurate the</p> <p>19 3.4 inches of movement?</p> <p>20 A. Like I said, I -- we -- we cannot dispute</p> <p>21 that. We have no -- we have no standing to dispute that.</p> <p>22 Whether that's -- whether that's physically true or not,</p> <p>23 it's not for us to -- to question, so I -- so it's</p> <p>24 pointless for us to dispute that.</p>	<p style="text-align: right;">Page 81</p> <p>1 myself. I wanted to examine the information and</p> <p>2 situation.</p> <p>3 Q. What information did you want to get?</p> <p>4 A. To see what was on the shop drawings.</p> <p>5 Q. Okay. If you could look at Exhibits 25 and</p> <p>6 26.</p> <p>7 And, for the record, these are incomplete or</p> <p>8 portions of the documents that they -- of the entire</p> <p>9 document. Twenty-five is the original submission as</p> <p>10 returned by the architect dated October 15th, 2014.</p> <p>11 Exhibit 26 is the architect's review and return of the</p> <p>12 revised drawings dated February 23rd, 2015. Both</p> <p>13 exhibits are the transmittal page from Perkins Eastman,</p> <p>14 et al., Limited. I believe it's the first five pages of</p> <p>15 the submission, and then it is the documents, the four</p> <p>16 pages I believe that are referred in RFI 1130, Exhibit 6.</p> <p>17 Those are sheet numbers D328, D329, D331 and Y52.</p> <p>18 Do you recognize Exhibits 25 and 26?</p> <p>19 A. Yes.</p> <p>20 Q. Do you or someone at Whitestone -- well, I</p> <p>21 know -- I think based on your prior answer you didn't</p> <p>22 look at these when these were returned from Perkins</p> <p>23 Eastman; is that accurate?</p> <p>24 A. At that time, no.</p>

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1 Q. Do you know if anyone at Whitestone looked at
2 these when they were returned from Perkins Eastman?
3 A. Not that I can say definitively, no.
4 Q. As a -- does Whitestone have a standard
5 practice or procedure what it does with shop drawings
6 that are returned from an architect when Whitestone has a
7 vendor who has prepared those shop drawings?
8 A. Then we would submit it -- we would submit it
9 back to the vendor to take any appropriate actions as
10 listed on -- on the shop drawings.
11 Q. Would the -- as the person or party with
12 responsibility, does Whitestone review the comments
13 itself or does it have a policy to review the comments?
14 A. Depending on the actual shop drawing and what
15 it's about, we may or may not review the -- we may or may
16 not review the comments from the shop drawings prior to
17 or submit -- prior to sending it back to the vendor.
18 Q. What is the -- how do you determine whether
19 or not to look at the shop drawings prior to returning
20 them to the vendor?
21 A. It would be up to the project manager to make
22 that decision.
23 Q. If you look at Exhibit 25, sheet number
24 YUANDA083, do you know what this sheet represents or what

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1 is depicted on this drawing sheet?
2 MR. CARBONE: You're talking about the larger
3 sheets?
4 MR. GILL: Correct.
5 MR. CARBONE: And what number were you --
6 Bates stamp number?
7 MR. GILL: YUANDA083.
8 MR. CARBONE: You're on number 25?
9 MR. GILL: Correct. On the original
10 submission, Exhibit 25.
11 BY THE WITNESS:
12 A. What drawing are you looking at?
13 BY MR. GILL:
14 Q. It's -- the drawing is Bates stamp YUANDA083.
15 It is drawing sheet Y52.
16 A. I don't see -- I don't see any stamp, date
17 stamps on here, these drawings.
18 MR. CARBONE: In the lower right-hand corner.
19 BY MR. GILL:
20 Q. Yeah, below the title block.
21 A. Okay. Yuanda what was it?
22 Q. 083.
23 A. 08 -- no, it stops at -- 0238 is -- is the
24 last one.

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1 Q. No, they're not --
2 MR. CARBONE: The numbers skip.
3 THE WITNESS: Oh, okay. Okay.
4 BY MR. GILL:
5 Q. Are you there?
6 A. Yes.
7 Q. Do you know what's depicted on this sheet?
8 A. Seems to be the clerestory, WT-3.
9 Q. WT-3?
10 A. Yes, WT-3.
11 Q. And do you have an understanding of who made
12 those notes that are kind of red or reddish-brown?
13 A. It seems that this is from the owner's
14 consultant. I'm not sure if it's the architect or their
15 curtainwall consultant. I'm not sure.
16 Q. Okay. And I want you to keep that open,
17 Exhibit 25 open, and open Exhibit 26 to the same drawing
18 sheet which is YUANDA439.
19 A. Okay.
20 Q. And you see that the notes at -- that were
21 included for the elevation have been removed in the later
22 draft in Exhibit 26?
23 A. Yes.
24 Q. Do you know why those notes were removed?

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1 A. Pretty much safe to assume that they're --
2 the original comments were addressed by Yuanda in the --
3 in the following submission.
4 Q. And in your experience, that -- the note was
5 removed because the architect was satisfied by how Yuanda
6 addressed it?
7 A. Yes. Most likely, yes.
8 Q. Okay. And if you can look to the last page
9 in both exhibits.
10 And, for the record, that's -- Exhibit 25 is
11 YUANDA238, and Exhibit 26 is YUANDA594.
12 A. 238 and 594?
13 Q. Yep.
14 A. Okay.
15 Q. Okay. In Exhibit 25, the earlier submission,
16 the original submission, do you see the note that says:
17 "See deflections of roof beam"?
18 A. On the -- Exhibit 25 you said; right?
19 Q. Correct.
20 A. Yes.
21 Q. Do you know what that refers to?
22 A. "Item of this condition shows glass sitting
23 on roof beam which we believe is correct. Movement must
24 be accommodated in this connection. See deflections of

<p style="text-align: right;">Page 86</p> <p>1 roof beam." And your question was?</p> <p>2 Q. Do you know what "see deflections of roof</p> <p>3 beam" refers to or means?</p> <p>4 A. Probably the -- how much the -- how much</p> <p>5 the -- the roof beam de -- bends and deflects.</p> <p>6 Q. When Whitestone received this back from</p> <p>7 Sciamme and after it sent it to Yuanda, do you know if</p> <p>8 Whitestone did anything to -- as a follow-up to that</p> <p>9 comment?</p> <p>10 A. Did anything regarding?</p> <p>11 Q. Seeing the deflection of the roof beam.</p> <p>12 A. I don't know if Whitestone did anything in</p> <p>13 reference to that comment. I can't -- I do not know.</p> <p>14 Q. Do you know if Whitestone provided additional</p> <p>15 information to Yuanda regarding the roof beam deflection?</p> <p>16 A. At that time I do not know. I'm not -- I</p> <p>17 can't say.</p> <p>18 Q. At that time -- what do you mean at that</p> <p>19 time? At the time -- you're unsure at the time or you're</p> <p>20 not sure now if anything happened at the time?</p> <p>21 A. I am not -- I do not know now if anything</p> <p>22 happened at that time.</p> <p>23 Q. Okay. Do you know if Whitestone did anything</p> <p>24 at any time regarding investigating the roof beam</p>	<p style="text-align: right;">Page 88</p> <p>1 Yuanda regarding these notes in Exhibit 25?</p> <p>2 A. Prior to the installation?</p> <p>3 Q. Yes.</p> <p>4 A. No.</p> <p>5 Q. Prior to the installation of the WT-3</p> <p>6 clerestory did you have a conversation with anyone at</p> <p>7 Yuanda regarding this note about the roof beam</p> <p>8 deflection?</p> <p>9 A. No.</p> <p>10 Q. Comparing that drawing sheet, YUANDA238 in</p> <p>11 Exhibit 25, and the same sheet in Exhibit 26, YUANDA594,</p> <p>12 the later submission 594 contains comments but that</p> <p>13 specific comment has been removed. Do you see that?</p> <p>14 A. Can I take a second to read the comments?</p> <p>15 Q. Absolutely. Like I said, I want the best</p> <p>16 answer you can give.</p> <p>17 A. Okay.</p> <p>18 (Witness peruses document.)</p> <p>19 Yes. In the 594, it does not mention</p> <p>20 anything -- there are no comments from the design team</p> <p>21 regarding any -- any movements.</p> <p>22 Q. Okay. Well, there are comments about</p> <p>23 movement.</p> <p>24 A. Well, it --</p>
<p style="text-align: right;">Page 87</p> <p>1 deflection?</p> <p>2 A. When we received our de -- our rejection from</p> <p>3 Sciamme based on the architect's and their engineer's</p> <p>4 comments, that's when we -- that's when we gave that</p> <p>5 information to Yuanda.</p> <p>6 Q. Gave what information?</p> <p>7 A. About that the -- that the deflection that</p> <p>8 was originally taken into account was not correct.</p> <p>9 Q. Is there anywhere you are aware of in the</p> <p>10 architectural drawings and structural drawings or the</p> <p>11 specifications where the roof beam deflection is stated</p> <p>12 as a number?</p> <p>13 A. That specific roof beam?</p> <p>14 Q. Yes.</p> <p>15 A. No, I'm not aware of anywhere in the specs or</p> <p>16 the plans that specifically say that specific roof beam</p> <p>17 has a specific deflection, no.</p> <p>18 Q. Do you know of any way or any place in the</p> <p>19 contract documents that Whitestone or Yuanda could have</p> <p>20 determined the roof beam deflection before it received</p> <p>21 the RFI response?</p> <p>22 A. I am not aware of, no.</p> <p>23 Q. Prior to the installation of the WT-3</p> <p>24 clerestory did you have any conversation with anyone at</p>	<p style="text-align: right;">Page 89</p> <p>1 Q. I'll get to that.</p> <p>2 A. Yeah, I'm sorry.</p> <p>3 Q. There are no comments about roof beam</p> <p>4 deflection?</p> <p>5 (Witness peruses document.)</p> <p>6 A. I guess if you -- there could be an inference</p> <p>7 from the comment "what happens when the roof lowers." In</p> <p>8 my opinion, it would be -- that's -- they are referencing</p> <p>9 the roof beam in my opinion. They don't specifically use</p> <p>10 the term roof beam, but that's what that comment infers</p> <p>11 in my opinion.</p> <p>12 Q. Okay. Because they changed the -- the</p> <p>13 architect changed the language or the -- they went from a</p> <p>14 statement of see deflection to asking a question, do you</p> <p>15 have any, based on your experience, opinion or have any</p> <p>16 idea why they did that or what that means?</p> <p>17 MR. CARBONE: Objection.</p> <p>18 BY THE WITNESS:</p> <p>19 A. Say that one more time, please.</p> <p>20 BY MR. GILL:</p> <p>21 Q. Based on your experience, do you have any</p> <p>22 opinion about what it means that the architect went from</p> <p>23 a statement saying see deflections to asking the</p> <p>24 question?</p>

<p style="text-align: right;">Page 90</p> <p>1 MR. CARBONE: Objection.</p> <p>2 BY THE WITNESS:</p> <p>3 A. My personal opinion would be that's a, what</p> <p>4 we call in the industry a cover my ass comment which</p> <p>5 means they're not asking -- they're not saying anything</p> <p>6 specific but they're saying something just in case</p> <p>7 something goes wrong. They could go back and say see, I</p> <p>8 told you so, but in reality, it's -- it's a worthless</p> <p>9 comment.</p> <p>10 BY MR. GILL:</p> <p>11 Q. The second one is a worthless comment?</p> <p>12 A. That's -- that's from me dealing -- yes,</p> <p>13 that's --</p> <p>14 Q. I just want a clarification. You said it's a</p> <p>15 worthless comment. I just want to make sure that I</p> <p>16 understand. You're referring to the second comment not</p> <p>17 the first comment?</p> <p>18 A. The second comment being which one?</p> <p>19 Q. The question.</p> <p>20 A. Okay. We have to -- I'm sorry. We have to</p> <p>21 start from the beginning now. I'm -- I'm --</p> <p>22 Q. Okay. Your statement was it's kind of a</p> <p>23 worthless comment, and I just want to make sure that I am</p> <p>24 looking at the same thing you are. The worthless comment</p>	<p style="text-align: right;">Page 92</p> <p>1 the -- you still referring to the drawing?</p> <p>2 Q. I'm still referring to the drawing on page</p> <p>3 594 in Exhibit 26.</p> <p>4 A. "Is the movement supposed to be accommodated</p> <p>5 in the glazing pocket"? Are you asking me if I</p> <p>6 technically know the answer to that?</p> <p>7 Q. Yes.</p> <p>8 A. No, I -- I don't know the technical answer to</p> <p>9 that.</p> <p>10 Q. Did anyone, Sciamme or the architect or the</p> <p>11 architect's consultant, require an answer to that</p> <p>12 question before installation?</p> <p>13 A. I -- I can't say. I -- I would not know.</p> <p>14 Q. They didn't -- you don't know if they</p> <p>15 required an answer from Whitestone before Whitestone</p> <p>16 installed or Whitestone's vendor installed the</p> <p>17 curtainwall?</p> <p>18 A. I -- that's -- can you repeat the question</p> <p>19 one more time?</p> <p>20 Q. Okay. Do you know if Sciamme, Perkins Eastman</p> <p>21 or Perkins Eastman's consultant required Whitestone to</p> <p>22 provide an answer to that question before Whitestone or</p> <p>23 its installer installed the WT-3 clerestory?</p> <p>24 A. I would say no because the -- the submittal</p>
<p style="text-align: right;">Page 91</p> <p>1 is the question what happens -- when the roof lowers is</p> <p>2 kind of --</p> <p>3 A. Yes.</p> <p>4 Q. -- a CYA --</p> <p>5 A. Yes.</p> <p>6 Q. -- worthless --</p> <p>7 A. It's a pointless -- pointless comment.</p> <p>8 Q. I just want to make sure that we're looking</p> <p>9 at the same thing.</p> <p>10 A. I guess pointless would be a better word than</p> <p>11 worthless, but it's a cover your -- cover-my-ass comment.</p> <p>12 Q. Yep. In your experience, would a consultant</p> <p>13 remove the note of see deflections of roof beam if Yuanda</p> <p>14 did not properly address the roof beam deflection?</p> <p>15 MR. CARBONE: Objection.</p> <p>16 BY THE WITNESS:</p> <p>17 A. I -- I can't get into the head of -- of a</p> <p>18 consultant. I can't answer that.</p> <p>19 BY MR. GILL:</p> <p>20 Q. Looking at the note just in Exhibit 26, the</p> <p>21 first comment is: "Is the movement supposed to be</p> <p>22 accommodated in the glazing pocket." Do you know the</p> <p>23 answer to that question?</p> <p>24 A. You're referring to the drawing or to</p>	<p style="text-align: right;">Page 93</p> <p>1 is -- is marked as made corrections noted, so I would --</p> <p>2 well, it's -- I would say no. It says made --</p> <p>3 submittal's marked mark corrections noted, so I would say</p> <p>4 that's not required for them to know beforehand.</p> <p>5 Q. And that is not a correction noted. That's a</p> <p>6 question; is that accurate?</p> <p>7 A. Yes.</p> <p>8 Q. The next one I think is a noted correction</p> <p>9 and states: "Provide counts showing this is adequate</p> <p>10 with 50 percent sealant with limit."</p> <p>11 A. Okay.</p> <p>12 Q. As part of the purchase order or as part of</p> <p>13 the requirements of the purchase order, was Yuanda</p> <p>14 required to provide engineer stamped calculations?</p> <p>15 A. Yes. I believe so, yes.</p> <p>16 Q. As far as you know, did Yuanda provide</p> <p>17 engineer stamped calculations?</p> <p>18 A. Yes. As far as I know, they did, yes.</p> <p>19 Q. As far as you know, did the architect or the</p> <p>20 architect's consultant approve that -- those submittal of</p> <p>21 the engineer stamped calculations?</p> <p>22 A. As far as I know, yes.</p> <p>23 Q. As we sit here today, can you recall anyplace</p> <p>24 where the architect or the architect's consultant</p>

<p style="text-align: right;">Page 94</p> <p>1 provided notes or comments where they state the roof beam 2 or the roof or the building deflection will be up to 3.4 3 inches? 4 A. Am I aware of anyplace on the contract 5 documents or specifications if they -- if they specified 6 that -- that roof movement of 3 point something inches? 7 Q. Correct. 8 A. I'm not aware of any right now. 9 Q. Are you aware of anywhere after they issued 10 the contract documents but before they issued the RFI 11 where the architect or the architect's consultant advised 12 Whitestone or Yuanda or Sciamé that the roof beam or the 13 building movement would be up to 3.4 inches? 14 A. No. 15 Q. If you can turn to Exhibit previously marked 16 number 7 which is Whitestone Proposed Change Order Number 17 98. 18 A. Okay. 19 Q. Do you recall if you saw this document before 20 it was submitted to Sciamé? 21 A. Before submitted to Sciamé, I don't recall. 22 Q. If you did see this, would you have made 23 comments or asked for corrections to it? 24 A. Probably not.</p>	<p style="text-align: right;">Page 96</p> <p>1 internal communication between you, Mr. Carvelas and Mr. 2 Dearth regarding this e-mail May 3rd, 2019 from Michael 3 Pardee? 4 A. There's any -- anything written? I do -- not 5 that I specifically -- excuse me. If there's anything, 6 written communication, I'm -- I don't specifically 7 remember. I'm not aware of. It's possible. I know we 8 did talk about it verbally. 9 Q. Okay. Did you take any notes of those verbal 10 conversations? 11 A. No, I did not take any notes. 12 Q. Okay. Mr. Dearth testified -- this is my 13 recollection of his testimony -- was that the first 14 notice from Sciamé about rejection -- that this e-mail 15 was the first notice about the rejection of the proposed 16 change order, but he testified at some time prior to 17 May 3rd Sciamé directed Whitestone to perform remedial 18 repairs. Is -- is that an accurate reflection of the 19 time line as far as you recall? 20 A. I can't -- I do not know. I can't say yes or 21 no. 22 Q. Do you recall the first time Sciamé asked 23 Whitestone to perform remedial repairs for the WT-3 24 clerestory?</p>
<p style="text-align: right;">Page 95</p> <p>1 Q. Have you since read the description that's on 2 the fourth page of this, 794? 3 A. I'm somewhat familiar with this -- this -- 4 these comments. 5 Q. As of today, do you agree or disagree with 6 this change order narrative as it's stated in Exhibit 7? 7 A. I agree. 8 Q. Is there anything you disagree with or is 9 there anything you recall you disagree with? 10 A. No, not that I am aware of at this point, no. 11 Q. If you can turn to the exhibit that was 12 previously marked Exhibit 8. 13 A. Okay. 14 Q. Do you recognize this document? 15 A. The first page? 16 Q. Yes. 17 A. Yes. 18 Q. Do you recall receiving this e-mail? 19 A. Yes. 20 Q. What was your reaction when you received this 21 e-mail? 22 A. I don't remember really. This was -- I 23 really do not remember. It's close to two years ago. 24 Q. Do you have -- does Whitestone have any</p>	<p style="text-align: right;">Page 97</p> <p>1 A. Specifically, no. I know they asked us to. 2 I don't specifically remember the conversation or the -- 3 or the time frame or anything like that. 4 Q. Do you know if it was before this May 3rd 5 e-mail in Exhibit 8? 6 A. We were told that -- that it -- the work was 7 rejected prior to this e-mail, and then at that point I 8 believe we did submit a change order to do the work, and 9 then that's when they came back to us with this e-mail 10 saying it's rejected, go do the work anyway. 11 Q. I understand. Between the time that you 12 submitted the change order and this e-mail did Sciamé 13 tell you to just do the work? 14 A. Not that I -- not that I remember. 15 Q. If you can turn to Exhibit 10, previously 16 marked Exhibit 10. 17 A. Okay. 18 Q. Do you recall -- 19 MR. CARBONE: Can you just tell me -- Adam, 20 could you just tell me what Exhibit 10 is? I don't have 21 that. 22 MR. GILL: Exhibit 10 is the description of 23 dispute dated May 6, 2019. 24 MR. CARBONE: Thank you.</p>

<p style="text-align: right;">Page 98</p> <p>1 BY MR. GILL:</p> <p>2 Q. Do you recall whether you saw this document</p> <p>3 before it was submitted to Sciamé?</p> <p>4 A. I could have. I could have not.</p> <p>5 Q. Do you recall whether you helped Mr. Carvelas</p> <p>6 draft this document?</p> <p>7 A. No. I most -- I -- I don't believe I did</p> <p>8 help him draft this document, no.</p> <p>9 Q. Have you -- are you aware of what's in this</p> <p>10 document, the contents of what Mr. Carvelas said?</p> <p>11 A. Generally speaking, yes.</p> <p>12 Q. Is there anything in this document as we sit</p> <p>13 here today that you disagree with?</p> <p>14 A. I do not think so.</p> <p>15 Q. If you look at the second page of this</p> <p>16 exhibit, YUANDA33307, and continuing onto 33308.</p> <p>17 A. Okay.</p> <p>18 Q. Do you see at the bottom of 33307 there is</p> <p>19 what Mr. Carvelas says is the excerpts of Yuanda's</p> <p>20 commentary?</p> <p>21 A. Yes.</p> <p>22 Q. Do you recall reading the Yuanda commentary?</p> <p>23 A. Specifically, no.</p> <p>24 Q. Okay. Do you recall at any time disagreeing</p>	<p style="text-align: right;">Page 100</p> <p>1 clerestory structural components."</p> <p>2 A. Yes.</p> <p>3 Q. What is the basis for that statement?</p> <p>4 A. The rejection that we received from Sciamé to</p> <p>5 our --</p> <p>6 Q. Sorry. The rejection of the purchase or the</p> <p>7 proposed change order?</p> <p>8 A. "Informing to notify you Sciamé has rejected</p> <p>9 as non-conforming --" well, technically, no. We're</p> <p>10 referring not to the rejection of the change order, to</p> <p>11 the rejection of the system --</p> <p>12 Q. Okay.</p> <p>13 A. -- technically. That's what that line says.</p> <p>14 Q. When did Sciamé reject the system?</p> <p>15 A. I do not know.</p> <p>16 Q. Is there a document that Whitestone or you</p> <p>17 received that Sciamé says we are rejecting the system?</p> <p>18 A. I -- I'm not aware of any specific document.</p> <p>19 Q. So how did you come to the conclusion that</p> <p>20 Sciamé is rejecting the system that Yuanda provided?</p> <p>21 A. I'm sure they provided us something, but I'm</p> <p>22 just saying my -- my answer's I'm not aware of the</p> <p>23 specific -- I am not aware of this specific document.</p> <p>24 Q. Did Sciamé reject the design of the system?</p>
<p style="text-align: right;">Page 99</p> <p>1 with what Yuanda said and Mr. Carvelas put in this</p> <p>2 Exhibit 10?</p> <p>3 A. No.</p> <p>4 Q. If you can turn to what's been previously</p> <p>5 marked as Exhibit 11. Oh, sorry. 12, Exhibit 12.</p> <p>6 And, for the record, that is a letter from</p> <p>7 Whitestone to Yuanda dated June 24th, 2019.</p> <p>8 MR. CARBONE: Thank you.</p> <p>9 BY THE WITNESS:</p> <p>10 A. Okay.</p> <p>11 BY MR. GILL:</p> <p>12 Q. And if you look at the second page, is that</p> <p>13 your signature?</p> <p>14 A. Yes, it is.</p> <p>15 Q. Do you recognize this letter?</p> <p>16 A. Yes.</p> <p>17 Q. Who wrote this letter?</p> <p>18 A. I do -- I do not remember.</p> <p>19 Q. Did you write this letter?</p> <p>20 A. I -- I do not think so. Did I write the</p> <p>21 letter directly myself? No.</p> <p>22 Q. In the first line, you state: "We are</p> <p>23 writing to formally notify you that Sciamé has rejected</p> <p>24 as non-conforming Yuanda's fabrication of the WT-3</p>	<p style="text-align: right;">Page 101</p> <p>1 A. Sciamé rejected the system which includes the</p> <p>2 design of the system.</p> <p>3 Q. Well, the system has many phases, one of</p> <p>4 which is design. Do you agree?</p> <p>5 A. Yes. Yes.</p> <p>6 Q. There's also fabrication. Do you agree?</p> <p>7 A. Yes.</p> <p>8 Q. Did Sciamé reject any component of the system</p> <p>9 because it was not properly fabricated?</p> <p>10 A. My -- my understanding of the issue is it was</p> <p>11 rejected because of the original design criteria used by</p> <p>12 Yuanda to take into account the design of the system.</p> <p>13 Q. Is there a communication from Sciamé where</p> <p>14 they state what you just said?</p> <p>15 A. Again, I'm not familiar -- I'm not exactly --</p> <p>16 I can't refer to a specific document where they say that</p> <p>17 that I'm aware of.</p> <p>18 Q. On June 24th, 2019 when you sent this letter</p> <p>19 to Yuanda, did you agree with Sciamé that Yuanda's</p> <p>20 fabrication of the WT-3 clerestory was non-conforming?</p> <p>21 A. Can you say -- ask that one more time,</p> <p>22 please.</p> <p>23 Q. Yes. On June 24th, 2019 when you sent this</p> <p>24 letter to Yuanda, did you, you personally, agree that</p>

<p style="text-align: right;">Page 102</p> <p>1 Yuanda's fabrication of the WT-3 clerestory was</p> <p>2 non-conforming?</p> <p>3 A. Give me a minute because I need to word this</p> <p>4 properly.</p> <p>5 (Brief pause.)</p> <p>6 MR. CARBONE: I'm just going to object to the</p> <p>7 form.</p> <p>8 BY THE WITNESS:</p> <p>9 A. Can you repeat that one more time, please.</p> <p>10 BY MR. GILL:</p> <p>11 Q. Absolutely. On June 24th, 2019 when you sent</p> <p>12 this letter to Yuanda, did you personally agree with</p> <p>13 Sciamé that Yuanda's fabrication or fabrication and</p> <p>14 design of the WT-3 clerestory was non-conforming?</p> <p>15 MR. CARBONE: I'll object to the form again.</p> <p>16 BY THE WITNESS:</p> <p>17 A. I agree that we are owed a -- that Whitestone</p> <p>18 and Yuanda are owed an extra to be paid for this work,</p> <p>19 remedial work.</p> <p>20 BY MR. GILL:</p> <p>21 Q. Based on that answer, it sounds like you do</p> <p>22 not agree with Sciamé's conclusion; is that correct?</p> <p>23 A. Yes, I agree that the architect and the</p> <p>24 engineer of record bear responsibility, significant</p>	<p style="text-align: right;">Page 104</p> <p>1 you told Yuanda Whitestone was rejecting Yuanda's work?</p> <p>2 A. I am -- I do not remember, no.</p> <p>3 Q. The way I read this letter and based on your</p> <p>4 testimony, Whitestone is not rejecting Yuanda's work but</p> <p>5 is passing through Sciamé's rejection. Is that an</p> <p>6 accurate understanding?</p> <p>7 MR. CARBONE: Objection.</p> <p>8 BY THE WITNESS:</p> <p>9 A. I think it's completely -- no, I would</p> <p>10 disagree. I would say that Whitestone is rejecting</p> <p>11 Yuanda's work based on Sciamé's rejection.</p> <p>12 BY MR. GILL:</p> <p>13 Q. Okay. Where in this do you say Whitestone is</p> <p>14 rejecting Yuanda's work?</p> <p>15 A. We don't specifically use those words, but I</p> <p>16 think it's clearly inferred and logical to come to that</p> <p>17 conclusion based on -- based on the letter.</p> <p>18 Q. Do you agree with Sciamé that Whitestone</p> <p>19 installed the WT-3 clerestory as non-conforming?</p> <p>20 A. We installed it according to the originally</p> <p>21 approved as-noted shop drawings.</p> <p>22 Q. Does that mean it was conforming or</p> <p>23 non-conforming?</p> <p>24 A. The design was non-conforming. We installed</p>
<p style="text-align: right;">Page 103</p> <p>1 responsibility for this.</p> <p>2 Q. Does Yuanda bear any responsibility?</p> <p>3 A. Yuanda bears responsibility inasmuch as</p> <p>4 Whitestone bears responsibility to Sciamé.</p> <p>5 Q. Since the architect and others bear you said</p> <p>6 significant responsibility, what was the purpose of</p> <p>7 sending this letter on June 24th, 2019?</p> <p>8 A. Because it is our interpretation of the</p> <p>9 agreement that if there's any work to be rejected that</p> <p>10 Yuanda is responsible to remedy it.</p> <p>11 Q. Mr. Dearth testified that to his knowledge</p> <p>12 this is the only letter or communication from Whitestone</p> <p>13 to Yuanda where Whitestone rejected Yuanda's work. Is</p> <p>14 that correct?</p> <p>15 A. I can't say yes or no.</p> <p>16 Q. Is there any other communication where you</p> <p>17 sent to -- Sorry. Strike that.</p> <p>18 Is there any communication that you sent to</p> <p>19 Yuanda in which you say that Yuanda's work is rejected?</p> <p>20 A. I -- I cannot say yes or no. I'm not aware.</p> <p>21 Q. I'm asking about -- and I want to make sure</p> <p>22 that you understand and the record's clear. I'm asking</p> <p>23 about what you did personally. You are not aware at any</p> <p>24 other time that you sent a communication to Yuanda where</p>	<p style="text-align: right;">Page 105</p> <p>1 it correctly to the -- to the incorrect design that's</p> <p>2 being claimed by the architect.</p> <p>3 Q. Is it your testimony that at the time</p> <p>4 Whitestone installed the clerestory the design failed to</p> <p>5 conform to the contract documents?</p> <p>6 A. Can you repeat that one more time?</p> <p>7 Q. Is it your testimony that at the time</p> <p>8 Whitestone installed the WT-3 clerestory that the</p> <p>9 curtainwall failed to conform to the contract documents?</p> <p>10 A. It's my understanding that at the time it was</p> <p>11 installed it was installed at that time according to the</p> <p>12 contract documents as understood at that time.</p> <p>13 Q. And at some later date there was additional</p> <p>14 design criteria provided by Sciamé or Perkins Eastman; is</p> <p>15 that an accurate statement?</p> <p>16 A. Yes.</p> <p>17 Q. And Yuanda -- Whitestone neither -- Strike</p> <p>18 that.</p> <p>19 Neither Whitestone nor Yuanda had that design</p> <p>20 criteria at the time that the curtainwall system was</p> <p>21 designed?</p> <p>22 A. The 3.4 inches?</p> <p>23 Q. Yes.</p> <p>24 A. As far as I know, no, I'm not aware of it.</p>

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1 Q. And neither Whitestone nor Yuanda had that
2 design criteria at the time that the curtainwall was
3 fabricated; is that accurate?
4 MR. CARBONE: Objection.
5 BY THE WITNESS:
6 A. As far --
7 BY MR. GILL:
8 Q. As far as you know?
9 A. As far as I'm aware, no.
10 Q. And neither Whitestone nor Yuanda had that
11 design criteria at the time that Whitestone installed the
12 WT-3 curtainwall as far as you know?
13 A. As far as I know, no.
14 MR. CARBONE: Objection.
15 BY THE WITNESS:
16 A. No.
17 BY MR. GILL:
18 Q. If you turn to the second page of Exhibit 12.
19 In the first paragraph, you state: "Yuanda is hereby
20 directed to remediate the misfabricated already installed
21 WT-3 clerestory as directed by Sciame and is advised that
22 all costs and expenses related to the same shall be borne
23 by and be the sole responsibility of Yuanda."
24 A. Yes.

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1 Q. What part of the WT-3 clerestory was
2 misfabricated as you state?
3 A. In essence, the entire thing was
4 misfabricated because it was -- it was fabricated
5 originally to the wrong design criteria.
6 Q. Well, do you agree that the components that
7 Yuanda delivered were fabricated based on approved shop
8 drawings?
9 A. Can you say that one more time, please.
10 Q. Do you agree that the components that Yuanda
11 delivered to the project site were fabricated based on
12 approved shop drawings?
13 A. It was based on made -- made corrections
14 noted shop drawings, yes.
15 Q. Were those components fabricated to conform
16 to the notes and the shop drawings?
17 A. The notes on the shop drawings at that time,
18 yes, those specific submissions, yes.
19 Q. And as far as you know, Whitestone installed
20 those components based on the approved shop drawings?
21 A. On those approved made corrections noted shop
22 drawings, yes.
23 Q. So what component that Whitestone installed
24 was misfabricated?

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1 A. It would be -- the entire system would be
2 misfabricated based on the architect's -- based upon the
3 architect's -- what's the term -- condition that the
4 total deflection was 3.4 inches.
5 Q. But --
6 A. Not based on --
7 Q. Sorry.
8 A. Not based upon the half an inch that was
9 originally used.
10 Q. That's a problem with the design not the
11 fabrication; right?
12 A. In my opinion, yes.
13 Q. Okay. And so the components that were
14 delivered to the site matched the components as shown in
15 the shop drawings; is that accurate?
16 A. The components that were delivered to the
17 site matched the components that were shown as made
18 corrections noted on the previous submission, yes.
19 Q. And just so we're touching all the bases,
20 your statement that Yuanda bears all costs -- we talked
21 about that when we talked about the purchase order -- is
22 that the section we discussed in the purchase order?
23 A. I believe --
24 MR. CARBONE: I'm going to -- I'm going to

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1 object to form only because you mentioned a lot of
2 sections of the purchase order, so if you want to refer
3 him to what language, that's fine.
4 MR. GILL: Okay. I withdraw the question.
5 BY MR. GILL:
6 Q. When you say that Yuanda is advised that all
7 costs and expenses related to same be borne by and be the
8 sole responsibility of Yuanda, what do you mean?
9 A. That any remediation of this -- any costs
10 associated with the remediation of this is the
11 responsibility of Yuanda.
12 Q. What's the basis for you saying that?
13 A. Based on our purchase order.
14 Q. What language in the purchase order says
15 that?
16 A. I'll have to go read all the pages to give
17 you the answer. I don't know.
18 Q. Did you read all the pages when you wrote
19 this letter?
20 A. I -- I don't think I wrote this letter.
21 Q. Who wrote --
22 A. Somebody --
23 Q. -- this letter?
24 A. Most -- most likely the project manager wrote

<p style="text-align: right;">Page 110</p> <p>1 it, and I reviewed it and signed off on it.</p> <p>2 Q. And you agreed with everything that was said</p> <p>3 in this letter then?</p> <p>4 A. I have no reason not to.</p> <p>5 Q. Okay. So what part of the purchase order</p> <p>6 requires that Yuanda bear all and be the sole</p> <p>7 responsibility for all costs?</p> <p>8 A. Didn't we review -- review that before?</p> <p>9 Q. I -- did we? I don't know.</p> <p>10 A. I -- I thought I remember we did. What --</p> <p>11 what was the exhibit number for the purchase order?</p> <p>12 Q. Five.</p> <p>13 MR. CARBONE: Wasn't it 4?</p> <p>14 MR. GILL: Oh, yes, 4. I'm sorry. Correct.</p> <p>15 BY MR. GILL:</p> <p>16 Q. And are you referring to -- to help not to</p> <p>17 belabor this, at the bottom of 1105 the paragraph under</p> <p>18 Paragraph 10, is that the portion that we discussed</p> <p>19 earlier and is that the portion you're referring to?</p> <p>20 MR. CARBONE: Just so the record's clear,</p> <p>21 you're referring to paragraph "Inspection and Defective</p> <p>22 Work"?</p> <p>23 MR. GILL: Correct.</p> <p>24 MR. CARBONE: Okay.</p>	<p style="text-align: right;">Page 112</p> <p>1 criteria; is that correct?</p> <p>2 A. Yes.</p> <p>3 Q. If this is a design change, why are you</p> <p>4 demanding that Yuanda pay all costs and expenses?</p> <p>5 A. Because it's our position that as far as</p> <p>6 Whitestone is responsible for any of -- any of this that</p> <p>7 it is actually Yuanda's responsibility.</p> <p>8 Q. Yuanda was responsible for installing this</p> <p>9 new -- newly designed bracket; is that your position?</p> <p>10 A. Sorry. That -- that question doesn't make</p> <p>11 much sense.</p> <p>12 Q. You said that it's your position to the</p> <p>13 extent that Whitestone is responsible that Yuanda is</p> <p>14 responsible; is that accurate --</p> <p>15 A. Yes.</p> <p>16 Q. -- what I said?</p> <p>17 A. To the -- Yes.</p> <p>18 Q. Okay. So why is Yuanda responsible for the</p> <p>19 actual installation or the cost to actually install this</p> <p>20 newly designed bracket?</p> <p>21 A. Because the installation of the newly</p> <p>22 designed bracket is a -- is a result of the original</p> <p>23 design not being correct.</p> <p>24 Q. Well, the original -- correct me if I'm</p>
<p style="text-align: right;">Page 111</p> <p>1 BY THE WITNESS:</p> <p>2 A. The line that says: "If vendor does not do</p> <p>3 so within a reasonable time, subcontractor shall have the</p> <p>4 right to do so, and vendor shall be liable to</p> <p>5 subcontractor for the costs thereof."</p> <p>6 BY MR. GILL:</p> <p>7 Q. Okay. In the last paragraph of your letter,</p> <p>8 Exhibit 12, you started by saying: "Be assured that</p> <p>9 Whitestone has taken and will continue to take the</p> <p>10 position that the information contained in Sciam's</p> <p>11 response to RFI number 1130 constitutes a belated design</p> <p>12 change in the contract documents for which Whitestone</p> <p>13 (and Yuanda) is entitled to a change order." Is that a</p> <p>14 true statement?</p> <p>15 A. Yes.</p> <p>16 Q. What do you mean by belated design change?</p> <p>17 A. That the architect came in after the fact to</p> <p>18 make a design change -- to make a change to the design</p> <p>19 criteria.</p> <p>20 Q. And what design criteria are you referring</p> <p>21 to?</p> <p>22 A. The -- the deflection.</p> <p>23 Q. So the misfabrication you referred to in this</p> <p>24 letter is a result of that later provided design</p>	<p style="text-align: right;">Page 113</p> <p>1 wrong. I know we're going in circles here. The original</p> <p>2 design was not correct because of later provided</p> <p>3 information; right?</p> <p>4 A. Again, that's my opinion, yes, but -- and</p> <p>5 like I said before, but as far as Whitestone is</p> <p>6 responsible, that responsibility is passed down to</p> <p>7 Yuanda.</p> <p>8 Q. Was Yuanda ever responsible under the terms</p> <p>9 of the purchase order for installing any part at the</p> <p>10 project?</p> <p>11 A. To install --</p> <p>12 MR. CARBONE: Objection. Objection to form.</p> <p>13 BY THE WITNESS:</p> <p>14 A. White -- I'm sorry. Ask one more time.</p> <p>15 BY MR. GILL:</p> <p>16 Q. Under the terms of the purchase order was</p> <p>17 Yuanda ever responsible for the costs to install any</p> <p>18 component of the WT-3 clerestory?</p> <p>19 MR. CARBONE: Objection to form.</p> <p>20 BY THE WITNESS:</p> <p>21 A. White -- Yuanda was not responsible to -- for</p> <p>22 the costs for any of the -- of the original installation</p> <p>23 of the -- of any material that they provided, no.</p> <p>24 BY MR. GILL:</p>

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1 Q. Why are they then responsible for the
2 installation of this newly designed bracket?
3 A. Because, once again, it's as far as
4 Whitestone was responsible to do this, our interpretation
5 is that Yuanda is responsible because of the design flaw,
6 the original design flaw.
7 Q. What is the original design flaw?
8 A. That the deflection went from -- was -- the
9 original -- the original design was based on half an
10 inch, where now the architect is stating that it's based
11 on 3.4 inches.
12 Q. Why didn't Whitestone provide that 3.5 -- 3.4
13 inches when Yuanda originally designed the clerestory?
14 A. Because we were not aware of it.
15 Q. So was Yuanda aware of it?
16 A. I -- I don't know if they were aware of it or
17 not. If they weren't or if it was unclear at any point
18 what the design should have been, it was Yuanda's
19 responsibility as the designer to ask the question what
20 is the proper deflection.
21 Q. Whitestone has a responsibility to Sciamme to
22 design the system; correct?
23 A. Yes.
24 Q. And Whitestone has a responsibility to Sciamme

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1 to ask the question about deflection; correct?
2 A. As -- when take into account our contract
3 direct with Sciamme, yes, Whitestone is responsible, but
4 Whitestone hired Yuanda as the consultant to do that work
5 for us.
6 Q. Did Whitestone ever ask Sciamme what the
7 maximum deflection was at the WT-3 clerestory?
8 A. Did Whitestone -- Whitestone never
9 specifically asked that question, no.
10 MR. GILL: Okay. I'd like to take a break
11 now.
12 MR. CARBONE: How long?
13 MR. GILL: Five minutes.
14 THE VIDEOGRAPHER: We'll go off record, 11:41.
15 (WHEREUPON, a break was
16 taken.)
17 We're back on the record at 11:49.
18 BY MR. GILL:
19 Q. I want to talk about the affidavit or
20 declaration you provided in support of Whitestone's
21 motion for summary judgment, so if you could look at
22 Exhibit 27.
23 A. Okay.
24 Q. Do you recognize this document? Have you

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1 seen this document in this form?
2 A. Yes.
3 Q. Now, I suspect that your attorney helped
4 because that's what we do, but who drafted the majority
5 of this declaration?
6 A. I'm pretty -- most likely my lawyer.
7 Q. Okay. Did you have an opportunity to review
8 and make comments of this before it was submitted?
9 A. Yes, I did.
10 Q. Before I ask questions about these
11 statements, are you aware of anything in here that's
12 inaccurate or incorrect?
13 A. Not that I'm aware of.
14 Q. Okay. And if you look at declaration number
15 1, statement number 1, it says you have personal
16 knowledge of the facts set forth herein. Is that
17 accurate?
18 A. Yes.
19 Q. In paragraph or statements 6 through 12, you
20 go through a very detailed explanation of the prime
21 contract and the administrative dispute resolution
22 process. It's my understanding from your prior -- your
23 testimony earlier today you have not seen the prime
24 contract; is that correct?

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1 A. I'm sorry?
2 Q. It's my understanding from your testimony
3 earlier today you had not seen the prime contract; is
4 that correct?
5 A. Between? Between whom?
6 Q. The prime contract as I understand it is
7 between the owner and Sciamme.
8 A. Okay. I -- yes, my recollection, I've never
9 seen it.
10 Q. Okay. If you turn to statement 14 which is
11 on Page 4 of Exhibit 27 and read that to yourself, and
12 I'm going to have you -- when I direct you to a
13 statement, I want you to read it to yourself.
14 A. Okay.
15 (Witness peruses document.)
16 Okay. I've read it.
17 Q. Okay. You state in this that -- in part,
18 that the construction documents were 100 percent
19 complete, meaning that the builder could construct the
20 project to 100 percent completion without any deviation
21 from the plans. Did you review the construction
22 documents when Whitestone received them?
23 A. Prior to bid?
24 Q. Yes.

<p style="text-align: right;">Page 118</p> <p>1 A. Not that I remember.</p> <p>2 Q. Who at Whitestone reviewed the construction</p> <p>3 documents?</p> <p>4 A. This would have been Phil Carvelas.</p> <p>5 Q. So what is the basis of your statement,</p> <p>6 your -- based on your personal knowledge that Whitestone</p> <p>7 reviewed them and they were 100 percent complete?</p> <p>8 A. Because that's simply the way things work.</p> <p>9 That's -- that's the -- that's -- that's industry</p> <p>10 standard.</p> <p>11 Q. That the construction documents are 100</p> <p>12 percent complete?</p> <p>13 A. That they're supposed to be, yes.</p> <p>14 Q. I understand they're supposed to be, but this</p> <p>15 is a statement of fact that you say Whitestone reviewed</p> <p>16 them and the documents were 100 percent complete. You</p> <p>17 don't know that as a fact. You're basing it on</p> <p>18 conversations with Phil; right, or someone else?</p> <p>19 A. No. I'm basing that upon -- that's un --</p> <p>20 it's industry standard, that when you provide a bid that</p> <p>21 you're providing a bid against drawings that are supposed</p> <p>22 to be 100 percent completed.</p> <p>23 Q. It was intended that the drawings be 100</p> <p>24 percent complete?</p>	<p style="text-align: right;">Page 120</p> <p>1 Okay.</p> <p>2 Q. Is that a statement that you have personal</p> <p>3 knowledge of?</p> <p>4 A. Personal knowledge at -- at the time -- at</p> <p>5 the time in -- at the time of April 2014?</p> <p>6 Q. Well, you signed these -- okay. Let me --</p> <p>7 let me clarify. These were submitted in November 2020,</p> <p>8 and so in November 2020 you are stating as fact the</p> <p>9 statement in 15.</p> <p>10 A. Yes.</p> <p>11 Q. In November 2020, was that an accurate</p> <p>12 statement?</p> <p>13 A. It was an accurate statement at -- at April</p> <p>14 2014 that when we commenced that that was the assumption.</p> <p>15 Q. Okay. What anticipated minimum changes did</p> <p>16 you expect?</p> <p>17 A. That's -- that's very difficult to -- to</p> <p>18 qualify or to describe. It's -- I would say you probably</p> <p>19 base that upon a percentage of the contract -- of the</p> <p>20 original contract value.</p> <p>21 Q. Okay. What percentage is it? How do you</p> <p>22 define minimum change?</p> <p>23 A. In my opinion, it would be one to two percent</p> <p>24 shooting from the hip, I guess.</p>
<p style="text-align: right;">Page 119</p> <p>1 A. Yes.</p> <p>2 Q. Okay. Do you know if they were 100 percent</p> <p>3 complete?</p> <p>4 A. I guess it depends on your definition of</p> <p>5 complete, meaning complete enough to provide a bid to or</p> <p>6 complete enough to build against.</p> <p>7 Q. What did you mean in statement 14 when you</p> <p>8 said they were 100 percent complete?</p> <p>9 A. Meaning to bid.</p> <p>10 Q. They were not 100 percent complete to be</p> <p>11 constructed to then?</p> <p>12 A. Well, they never are because it's -- it's --</p> <p>13 I don't think there's ever been any job in the history of</p> <p>14 construction that there's never been a change to a -- to</p> <p>15 a contract document.</p> <p>16 Q. Quite frankly, I was surprised to see the</p> <p>17 number 100 percent complete in your statement of facts</p> <p>18 because you're absolutely right. Things happen. Things</p> <p>19 change. Things don't -- aren't the way they are drawn.</p> <p>20 Architects can draw anything. I get that.</p> <p>21 So turning to statement 15, can you read that</p> <p>22 to yourself?</p> <p>23 A. "Whitestone commenced work on the project --"</p> <p>24 (Witness peruses document.)</p>	<p style="text-align: right;">Page 121</p> <p>1 Q. Were the WT-3 clerestory not -- sorry. So</p> <p>2 for all of the curtainwall, all the work that Yuanda was</p> <p>3 going to perform not counting this later change, what</p> <p>4 were the total percentage of changes that occurred during</p> <p>5 construction?</p> <p>6 A. I don't know. I can't answer that.</p> <p>7 Q. Was it more than one or two percent?</p> <p>8 A. I am -- I -- I have -- I have no idea. I</p> <p>9 can't answer that. I don't have -- I never saw that</p> <p>10 information.</p> <p>11 Q. Who would have that information?</p> <p>12 A. I guess Phil Carvelas would.</p> <p>13 Q. If you can turn to statement 19. Read that</p> <p>14 to yourself.</p> <p>15 (Witness peruses document.)</p> <p>16 A. Okay.</p> <p>17 Q. Okay. And I'm asking for clarity on this</p> <p>18 because I'm confused. This -- the way this reads to me</p> <p>19 is that Whitestone and Yuanda did all of the work listed</p> <p>20 here cooperatively. So -- but it's my understanding that</p> <p>21 actually Yuanda did the work regarding preparing</p> <p>22 submittals, drawings and materials needed to obtain</p> <p>23 approval. Is that accurate?</p> <p>24 A. Yeah, for their -- for their scope of work</p>

<p style="text-align: right;">Page 122</p> <p>1 that they were hired to do, yes.</p> <p>2 Q. Okay. And that Whitestone and not Yuanda was</p> <p>3 working to construct and install the curtainwall?</p> <p>4 A. I don't get -- I don't get that question.</p> <p>5 Q. Well, it says -- the second part is: "And</p> <p>6 thereafter, to construct and install the project's</p> <p>7 curtainwall system including but not limited to the WT-3</p> <p>8 clerestory." Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. And who was responsible for the construction</p> <p>11 and installation of the project's curtainwall system?</p> <p>12 A. It was -- it was the responsibility of Yuanda</p> <p>13 to design and fabricate it and for Whitestone to -- to</p> <p>14 install.</p> <p>15 Q. Did White -- or did Yuanda have any</p> <p>16 responsibility for the installation of the curtainwall</p> <p>17 system?</p> <p>18 MR. CARBONE: Objection.</p> <p>19 BY THE WITNESS:</p> <p>20 A. At the original installation, no.</p> <p>21 BY MR. GILL:</p> <p>22 Q. If you can turn to statement 23 on Page 7.</p> <p>23 A. Okay.</p> <p>24 Q. Read that to yourself, please.</p>	<p style="text-align: right;">Page 124</p> <p>1 which is Exhibit 6. Do you know what the architect or</p> <p>2 its consultant was talking about when it talks about</p> <p>3 concern was previously noted in the 2014 prior submittals</p> <p>4 to verify the larger movement joint to accommodate roof</p> <p>5 deflection?</p> <p>6 A. Specifically what he's referring to I don't</p> <p>7 know.</p> <p>8 Q. Did you do anything to ask or investigate</p> <p>9 what the architect meant regarding that comment?</p> <p>10 A. I'm not -- I'm not even -- like I said, I'm</p> <p>11 not even aware of that comment, so I can't -- I can't</p> <p>12 answer that question. I'm not even -- I don't even know</p> <p>13 what -- what comment he's referring to.</p> <p>14 Q. If you can turn to Exhibit 6. In the yellow</p> <p>15 box on the first page of Exhibit 6, there are four noted</p> <p>16 items or noted comments or questions.</p> <p>17 A. Yes.</p> <p>18 Q. The second one appears to be the one you're</p> <p>19 referring to in your declaration. So do you recall ever</p> <p>20 reading that comment on the RFI, Exhibit 6?</p> <p>21 A. You mean -- do you mean the comment on the</p> <p>22 RFI or the comment he's referring to originally?</p> <p>23 Q. The comment on the RFI.</p> <p>24 A. I don't specifically remember reading this</p>
<p style="text-align: right;">Page 123</p> <p>1 (Witness peruses document.)</p> <p>2 A. Okay.</p> <p>3 Q. In statement 23 you say at the end, the last</p> <p>4 half is: "There were no obvious and unambiguous</p> <p>5 corrections noted with respect to any -- to the --"</p> <p>6 sorry -- "with respect to the ability of the WT-3</p> <p>7 clerestory system to accommodate movement." Is that an</p> <p>8 accurate statement?</p> <p>9 A. Yes.</p> <p>10 Q. What do you mean by no obvious and</p> <p>11 unambiguous corrections noted?</p> <p>12 A. At that time the architect never -- never</p> <p>13 indicated the -- the proper deflection of 3.4 inches at</p> <p>14 that point, at that time in this submittal.</p> <p>15 Q. For the record, we're talking about the</p> <p>16 second submittal, the make corrections noted --</p> <p>17 A. Yes.</p> <p>18 Q. -- comments?</p> <p>19 If you can look at statement 28 on the next</p> <p>20 page, Page 8. Read that to yourself, please.</p> <p>21 (Witness peruses document.)</p> <p>22 A. Okay.</p> <p>23 Q. In your answer, you quote from the RFI</p> <p>24 response, and you may want the RFI, you know, response</p>	<p style="text-align: right;">Page 125</p> <p>1 comment on this RFI.</p> <p>2 Q. Do you remember any communication between you</p> <p>3 and Sciamé or Perkins Eastman regarding previous concerns</p> <p>4 expressed by the architect or the architect's consultant?</p> <p>5 MR. CARBONE: Just for clarity, when you say</p> <p>6 you, you mean Mr. Grzic --</p> <p>7 MR. GILL: I'm not talking about --</p> <p>8 MR. CARBONE: -- personally?</p> <p>9 MR. GILL: Yes.</p> <p>10 MR. CARBONE: Personally?</p> <p>11 MR. GILL: Yes.</p> <p>12 MR. CARBONE: Okay.</p> <p>13 BY THE WITNESS:</p> <p>14 A. Not that I -- not that I'm aware of, no.</p> <p>15 BY MR. GILL:</p> <p>16 Q. Is there anything that you know of, know</p> <p>17 about their concerns, meaning Perkins Eastman, Sciamé or</p> <p>18 the consultant, other than what's actually stated in this</p> <p>19 document?</p> <p>20 A. Which document?</p> <p>21 Q. The RFI, Exhibit 6.</p> <p>22 A. Okay. So repeat that question then one more</p> <p>23 time.</p> <p>24 Q. Do you have any understanding or information</p>

<p style="text-align: right;">Page 126</p> <p>1 regarding Sciame, Perkins Eastman or the consultant's</p> <p>2 concern other than what's stated in the Exhibit 6?</p> <p>3 A. Not really.</p> <p>4 Q. Do you -- did you do anything to investigate</p> <p>5 this statement in Exhibit 6?</p> <p>6 A. Me personally?</p> <p>7 Q. Yes.</p> <p>8 A. No.</p> <p>9 Q. Do you know if anyone at Whitestone did</p> <p>10 anything to investigate that comment?</p> <p>11 A. Not definitively, no, but they -- not</p> <p>12 definitively, no.</p> <p>13 Q. And then you said but. I missed what you</p> <p>14 said.</p> <p>15 A. Yeah, I --</p> <p>16 Q. They should have or they shouldn't?</p> <p>17 A. No. My answer's I definitively -- no, that's</p> <p>18 it. I definitively do not know if anybody looked into</p> <p>19 this, no.</p> <p>20 Q. Okay. If you can read statement 29 to</p> <p>21 yourself in Exhibit 27 on Page 8.</p> <p>22 A. You said 27 or 29?</p> <p>23 Q. No. No. Sorry. I know a lot of numbers.</p> <p>24 Exhibit 27 --</p>	<p style="text-align: right;">Page 128</p> <p>1 Sciame -- Sciame to Whitestone." What direction are you</p> <p>2 referring to?</p> <p>3 A. That the system is rejected.</p> <p>4 Q. I understand. But the direction came -- was</p> <p>5 received in some way. So is that the May 3rd, 2019</p> <p>6 e-mail or was there something else? And before you</p> <p>7 answer, that May 3rd e-mail is Exhibit 8.</p> <p>8 A. Exhibit 8?</p> <p>9 Q. Yes.</p> <p>10 A. Yes, most likely it refers to Exhibit 8, yes.</p> <p>11 Q. Okay. Were there any other directions that</p> <p>12 you were referring to from Sciame that Whitestone needs</p> <p>13 to create -- perform remedial repairs?</p> <p>14 A. I am not aware of any other one.</p> <p>15 Q. Okay. Now, is the last half of that</p> <p>16 statement also correct that Sciame was directing</p> <p>17 Whitestone to make changes to the "previously installed</p> <p>18 WT-3 clerestory structural members to be modified in the</p> <p>19 field"? Is that an accurate statement?</p> <p>20 A. That -- say that question one more time,</p> <p>21 please.</p> <p>22 Q. I just want to know if the last half of that</p> <p>23 sentence is accurate, that Sciame directed Whitestone</p> <p>24 that the previously installed WT-3 clerestory structural</p>
<p style="text-align: right;">Page 127</p> <p>1 A. Oh, okay.</p> <p>2 Q. -- your declaration, on Page 8, paragraph 29.</p> <p>3 A. Okay.</p> <p>4 (Witness peruses document.)</p> <p>5 Okay.</p> <p>6 Q. The second sentence you state: "Our position</p> <p>7 was that the architect's submittal disposition" then it</p> <p>8 continues. I just -- question about our position. Are</p> <p>9 you referring to the combined position of Yuanda and</p> <p>10 Whitestone or are you talking about Whitestone's</p> <p>11 position?</p> <p>12 A. Well, our appears to be referencing</p> <p>13 Whitestone and Yuanda in the sentence before, so I would</p> <p>14 say Yuanda and Whitestone.</p> <p>15 Q. Okay. And so it's your understanding and</p> <p>16 position that Yuanda was permitted to fabricate the WT-3</p> <p>17 clerestory based on the second submission as long as they</p> <p>18 complied with the comments that the architect provided;</p> <p>19 is that accurate?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. If you can look at statement 30 on the</p> <p>22 same page.</p> <p>23 A. Okay.</p> <p>24 Q. You say: "In a -- in a direction by</p>	<p style="text-align: right;">Page 129</p> <p>1 members be modified in the field?</p> <p>2 A. No, I don't think Sciame -- quote Sciame</p> <p>3 didn't specifically say to -- Sciame does not -- would</p> <p>4 not have told us the means and methods of what to do or</p> <p>5 how to do it. It would have been our responsibility to</p> <p>6 propose a remediation, and the architect of record would</p> <p>7 have to approve it, and then the means and methods of --</p> <p>8 of -- of finishing that remediation would be up to us, so</p> <p>9 technically your -- the answer -- the technical answer to</p> <p>10 your question is Sciame did not direct us to modify it in</p> <p>11 the field.</p> <p>12 Q. It was Whitestone's means and methods on how</p> <p>13 that modification or remediation was to be accomplished?</p> <p>14 A. Along with Yuanda because Yuanda prior --</p> <p>15 provided us with the drawings of what they would approve</p> <p>16 of the changes to their system.</p> <p>17 Q. If you can turn to the next page and read</p> <p>18 statement 32 to yourself.</p> <p>19 (Witness peruses document.)</p> <p>20 A. Okay.</p> <p>21 Q. You state -- the last half of the first</p> <p>22 sentence says: "Whitestone was required under the</p> <p>23 administrative dispute resolution process to correct the</p> <p>24 work immediately." Is that -- where is that requirement</p>

<p style="text-align: right;">Page 130</p> <p>1 of Whitestone stated?</p> <p>2 A. That would be somewhere in the contract</p> <p>3 between Whitestone and Sciame.</p> <p>4 Q. Is that in the prime contract or the</p> <p>5 subcontract?</p> <p>6 A. I don't know off the top of my head. I'm not</p> <p>7 sure.</p> <p>8 Q. Is that the requirement that Whitestone</p> <p>9 perform work under protest? Is that tied to the same</p> <p>10 thing?</p> <p>11 A. Yeah. I would -- yeah, they're related.</p> <p>12 Q. Are you -- do you know whether the purchase</p> <p>13 order Terms and Conditions require that Yuanda perform</p> <p>14 work under protest?</p> <p>15 A. That's my understanding, yes.</p> <p>16 MR. CARBONE: Mr. Gill?</p> <p>17 MR. GILL: Yeah.</p> <p>18 MR. CARBONE: Mr. Gill, our lunch came, so</p> <p>19 whenever it's good for you to break.</p> <p>20 MR. GILL: Let me finish up on this statement</p> <p>21 then we can take a break.</p> <p>22 MR. CARBONE: Sure.</p> <p>23</p> <p>24 BY MR. GILL:</p>	<p style="text-align: right;">Page 132</p> <p>1 Q. I only ask because you said this is a life</p> <p>2 safety issue.</p> <p>3 You state in that same sentence that Yuanda</p> <p>4 agreed to get paid later. What is your factual basis</p> <p>5 that Yuanda agreed to get paid later?</p> <p>6 MR. CARBONE: I'm going to object to the --</p> <p>7 BY THE WITNESS:</p> <p>8 A. You know --</p> <p>9 MR. CARBONE: I'm going to object to the</p> <p>10 form. I don't think that's what it says.</p> <p>11 MR. GILL: Okay. I'll read it again into the</p> <p>12 record.</p> <p>13 MR. CARBONE: Sure.</p> <p>14 BY MR. GILL:</p> <p>15 Q. "Yuanda was aware of the need to fix now and</p> <p>16 agreed to get paid later (if at all) pending the outcome</p> <p>17 of the dispute resolution process." So what is your</p> <p>18 basis for saying Yuanda agreed to get paid later?</p> <p>19 MR. CARBONE: Same objection.</p> <p>20 BY THE WITNESS:</p> <p>21 A. That was -- it didn't come through.</p> <p>22 MR. GILL: I heard it. Yeah, it came through.</p> <p>23 THE WITNESS: Oh, okay.</p> <p>24 BY THE WITNESS:</p>
<p style="text-align: right;">Page 131</p> <p>1 Q. In this last statement, paragraph 32 on Page</p> <p>2 9, you state: "Yuanda was aware of the need to fix now</p> <p>3 and agreed to get paid later (if at all) pending the</p> <p>4 outcome of the dispute resolution process." What is your</p> <p>5 basis that -- to say that Yuanda was aware of the need to</p> <p>6 fix now?</p> <p>7 A. We -- Whitestone told Yuanda that this is --</p> <p>8 that it needs to be fixed now. This is -- we cannot</p> <p>9 delay fixing this because it's a -- one, it's a life</p> <p>10 safety issue; and, two, by contract we need to fix it now</p> <p>11 even though we disagree with the owner's stance that it</p> <p>12 is not an extra.</p> <p>13 Q. What does -- what do you refer to or the time</p> <p>14 frame of now? Because this was raised in January 2017.</p> <p>15 The work occurred in August/September of 2020, so what is</p> <p>16 the -- what do you mean by now?</p> <p>17 A. ASA -- as soon as possible I would say.</p> <p>18 Q. Okay. Was the building shut down between</p> <p>19 January 2017 and the time that the remediation was</p> <p>20 completed?</p> <p>21 A. Due to COVID, I believe so.</p> <p>22 Q. Was it shut down prior to COVID, prior to</p> <p>23 February 2019 -- 2020? I'm sorry.</p> <p>24 A. 20 -- not that I'm aware of. I do not know.</p>	<p style="text-align: right;">Page 133</p> <p>1 A. Okay. That's based upon our purchase order</p> <p>2 which we feel that it states that Yuanda's held to the</p> <p>3 same Terms and Conditions as we are to the owner</p> <p>4 regarding disputed -- disputed work, saying that Yuanda</p> <p>5 is bound to those same conditions to fix it now and --</p> <p>6 and to -- to get compensated at a later date pending the</p> <p>7 outcome of the dispute resolution process.</p> <p>8 BY MR. GILL:</p> <p>9 Q. You're -- you're not referring to some</p> <p>10 communication that occurred after January 2017 where</p> <p>11 Yuanda said we agree to get paid later?</p> <p>12 A. No, I'm not aware of Yuanda ever saying that</p> <p>13 to me.</p> <p>14 MR. GILL: That's it on this. We'll take a</p> <p>15 break. What do you need, half hour?</p> <p>16 MR. CARBONE: Half an hour's good.</p> <p>17 MR. GILL: Okay. Sounds good.</p> <p>18 THE VIDEOGRAPHER: Off the record, 12:15.</p> <p>19 (WHEREUPON, a break was</p> <p>20 taken.)</p> <p>21 We're back on the record at 12:49.</p> <p>22 BY MR. GILL:</p> <p>23 Q. Okay. Still looking at Exhibit 27, your</p> <p>24 declaration, if you can look at Page 13, statement 44 and</p>

<p style="text-align: right;">Page 134</p> <p>1 read that to yourself, please.</p> <p>2 (Witness peruses document.)</p> <p>3 A. Okay.</p> <p>4 Q. In this statement, you say that: "Whitestone</p> <p>5 informed Yuanda that the right to seek additional</p> <p>6 compensation was specifically preserved." Did you have</p> <p>7 any discussions with Yuanda regarding the right to seek</p> <p>8 additional compensation whether that was specifically</p> <p>9 preserved?</p> <p>10 A. I had discussions with Yuanda telling them</p> <p>11 yes, that we will -- that we have the right to -- to go</p> <p>12 after this extra and that we fully intend to.</p> <p>13 Q. Okay. What do you mean by was specifically</p> <p>14 preserved by Whitestone's timely filing of the notice of</p> <p>15 dispute?</p> <p>16 A. The contract -- the contract -- the contract</p> <p>17 requires us to file a notice of dispute and a description</p> <p>18 of dispute whenever there's a dispute arises as to extra</p> <p>19 work and that those notices were filed with the</p> <p>20 construction manager, Sciamé.</p> <p>21 Q. Okay. And was that in the subcontract</p> <p>22 between Whitestone and Sciamé or the prime contract, the</p> <p>23 requirement?</p> <p>24 A. I don't remember which one it was in. I</p>	<p style="text-align: right;">Page 136</p> <p>1 connection of the WT-3; correct?</p> <p>2 A. Yes.</p> <p>3 Q. That included new details for that head</p> <p>4 connection; is that accurate?</p> <p>5 A. Yes.</p> <p>6 Q. It included new structural calculations for</p> <p>7 that connection?</p> <p>8 A. I believe so, yes.</p> <p>9 Q. Yuanda did, in fact, provide design services</p> <p>10 for that new connection, didn't it?</p> <p>11 A. Yes, they did.</p> <p>12 Q. They -- they redesigned the connection</p> <p>13 detail?</p> <p>14 A. I'm not sure if they redesigned it from</p> <p>15 scratch or if someone from my office proposed to them</p> <p>16 what -- what we felt would be best in the field to do and</p> <p>17 they just reviewed it and agreed to it, said yes, go</p> <p>18 ahead.</p> <p>19 Q. Well, they provided --</p> <p>20 A. They --</p> <p>21 Q. They provided the drawings?</p> <p>22 A. Yeah, they provided the actual drawings and</p> <p>23 the calculation, yes.</p> <p>24 Q. And they provided engineer stamped</p>
<p style="text-align: right;">Page 135</p> <p>1 don't know.</p> <p>2 Q. And then the second sentence at the very</p> <p>3 bottom of the page says: "Whitestone further urged</p> <p>4 Yuanda to complete the remediation work under protest."</p> <p>5 Did you have conversations directly with Yuanda regarding</p> <p>6 Yuanda's requirement to perform work under protest?</p> <p>7 A. I talked to Yuanda directly, and I believe</p> <p>8 that was mentioned.</p> <p>9 Q. Okay. When did you -- if you recall, when</p> <p>10 did you tell Yuanda that it needed to perform remediation</p> <p>11 work under protest?</p> <p>12 A. I -- the exact dates or even the general time</p> <p>13 line I don't even know. I can't even say. Prior to</p> <p>14 us -- prior to us commencing with the actual physical</p> <p>15 work.</p> <p>16 Q. In this statement what remediation work are</p> <p>17 you referring to?</p> <p>18 A. What remediation work? That we -- I don't</p> <p>19 know if I can technically tell you. I think some --</p> <p>20 some -- some of the steel in WT-3 was replaced or added</p> <p>21 to allow -- to allow more deflection in the system.</p> <p>22 That's the best I could describe it as.</p> <p>23 Q. The remediation work required by Sciamé's</p> <p>24 rejection included redesign of that connection, the head</p>	<p style="text-align: right;">Page 137</p> <p>1 calculations?</p> <p>2 A. Yes.</p> <p>3 Q. So Yuanda did provide work -- remediation</p> <p>4 with respect to this new connection?</p> <p>5 A. They provided some services, yes.</p> <p>6 Q. Okay. If you can look at statement 45 and</p> <p>7 read that to yourself.</p> <p>8 (Witness peruses document.)</p> <p>9 A. Okay.</p> <p>10 Q. My question relates to the -- what you see in</p> <p>11 the second line where -- the "remediate the purportedly</p> <p>12 misfabricated previously installed clerestory system."</p> <p>13 Are you referring to when you say misfabricated what we</p> <p>14 discussed earlier about the misfabrication, that it was</p> <p>15 the entire system that was misfabricated?</p> <p>16 MR. CARBONE: I object to form.</p> <p>17 BY THE WITNESS:</p> <p>18 A. Can you ask the question one more time?</p> <p>19 BY MR. GILL:</p> <p>20 Q. Okay. What misfabricated components of the</p> <p>21 WT-3 clerestory system are you referring to in this</p> <p>22 statement?</p> <p>23 A. Misfabricated means originally fabricated</p> <p>24 along -- misfabricated according to the new design</p>

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1 criteria, so the -- the best I can answer that is the
 2 entire system is -- is misfabricated. I can't point out
 3 any specific component of the system that would be
 4 misfabricated.

5 Q. Was any part of the WT-3 clerestory
 6 misfabricated based on the information that Whitestone
 7 had or Yuanda had as of December 31st, 2016?

8 A. Is that date -- that date refers to what --
 9 what happened on that date specifically?

10 Q. Nothing. It's three weeks before the RFI was
 11 issued. So at any time --

12 A. Oh.

13 Q. -- prior to the issuance of the RFI was
 14 the -- is it your opinion whether the WT-3 clerestory was
 15 misfabricated?

16 A. We were not aware of any reason for it to be
 17 misfabricated at that time.

18 Q. I'm not asking whether you were aware. I'm
 19 saying as you sit here today do you have an opinion about
 20 whether the system was misfabricated based on the
 21 information known as of the date of the RFI.

22 A. No. I'm sorry. Based on -- upon that --
 23 that date prior to that RFI; correct?

24 Q. Correct.

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1 A. Yes, prior to their RFI, no. You have my
 2 answer.

3 Q. Sorry. There's a lot of yes, no and dates
 4 and things like that, and I'm not trying to trap you or
 5 trick you.

6 A. No, I understand.

7 Q. As date of the RFI or as of the date before
 8 the RFI, you agree that Yuanda's design -- Strike that.

9 You agree that none of the components were
 10 misfabricated?

11 A. Yes. That was our -- that was our
 12 understanding, yes.

13 Q. If you look at statement 49 on Page 14.
 14 Please read that to yourself.

15 (Witness peruses document.)

16 A. Okay.

17 Q. What -- you say that Yuanda refused to do any
 18 work to correct the WT-3 clerestory system as directed by
 19 Whitestone. What work did Whitestone direct Yuanda to
 20 perform?

21 A. To actually perform the physical remediation,
 22 to provide the materials and to perform, physically
 23 perform the remediation whether through them directly or
 24 if they wanted to hire a third party or if they wanted to

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1 hire us to do it or any of those means.

2 Q. Did Whitestone direct Yuanda to come up with
 3 a new design for the connection?

4 A. Once again, I'm not sure if they came up with
 5 the design themselves or if we proposed the design.

6 Q. My question is did Whitestone direct Yuanda
 7 to come up with a new design.

8 A. I don't know because I -- like I said, we
 9 could have proposed the design to them.

10 Q. Did Whitestone direct Yuanda to come up or
 11 provide structural calculations?

12 A. Yes.

13 Q. Did Whitestone direct Yuanda to fabricate the
 14 new connection or the new brackets?

15 A. Yes.

16 Q. Did Whitestone direct Yuanda to provide
 17 technical support during the remediation?

18 A. Yes.

19 Q. Did Whitestone, in fact, come up with a new
 20 design whether it was based on a suggestion or not?

21 A. Once again, are you asking if we came up with
 22 the design?

23 Q. I probably -- I misspoke. I'm sure I
 24 misspoke.

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1 Did Yuanda come up with a new design whether
 2 or not it was based on a suggestion from Whitestone?

3 A. Yes.

4 Q. Did Yuanda actually provide engineer stamped
 5 calculations?

6 A. Yes.

7 Q. Did Yuanda actually offer to fabricate the
 8 new connections?

9 A. Did they?

10 Q. Offer to fabricate.

11 A. I'm not sure. I'm not sure if they ever
 12 offered to fabricate it.

13 Q. Did Yuanda ever offer to provide technical
 14 assistance during installation of the new connection?

15 A. If they ever directly offered technical
 16 assistance I'm not -- I cannot say. If it would have
 17 been inferred, I -- that's a different question I would
 18 say.

19 Q. So isn't it true that Yuanda did not refuse
 20 to perform any work? Yuanda did, in fact, refuse to
 21 perform installation work though?

22 A. They refused to perform installation work,
 23 but they also refused to provide material in a timely
 24 manner which for us the direction was time is of the

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1 essence, and by the time they offered to provide the
2 material, we -- we had to -- by that time we already had
3 to make decisions to go to a local supplier which would
4 have been faster because we had -- we had -- we had heat
5 on us from the owner/Sciame to get this done.

6 Q. When did you make the demand that they
7 provide material in a timely fashion?

8 A. I -- I do not know. I don't know. I do not
9 know.

10 Q. Was it prior to the -- 2020?

11 A. I do not know.

12 Q. When did Whitestone contact its local
13 supplier in order to get the brackets in a timely
14 fashion?

15 A. I do not know.

16 Q. So you really don't know whether or not
17 Yuanda could have provided the brackets in a timely
18 fashion?

19 MR. CARBONE: Objection to the form.

20 BY THE WITNESS:

21 A. From my understanding of the situation, it
22 was Yuanda's stance up to the time we had to make the
23 decision, the final decision to go and actually order the
24 material to do the work, it was my understanding that

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1 their stance at that point was they were not gonna
2 provide anything else besides the drawings that they
3 already provided.

4 BY MR. GILL:

5 Q. Approximately when was that decision made
6 that you had to deal with the local supplier?

7 A. I do not know.

8 Q. Was it in 2020 or before 2020?

9 A. It was probably in -- that we went -- that we
10 had to go with a local supplier, probably would have been
11 2020 I would have to say.

12 Q. We looked at vendor's work, the definition of
13 vendor's work, in the purchase order Exhibit 4, and feel
14 free to refer back to that. It's on the first page.

15 A. Of what?

16 Q. Exhibit 4, the purchase order.

17 A. Oh, Exhibit 4.

18 Q. Vendor's work does not include the definition
19 of installation of any component of the curtainwall
20 system, does it?

21 A. No. In this sense, no.

22 Q. I want you to look at Exhibit 2 which is the
23 Complaint.

24 A. Okay.

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1 Q. Have you seen this document before?

2 A. I'm sure it's come across my desk before. I
3 don't specifically remember reviewing it but --

4 Q. I only have a few questions. If you look at
5 Page 5 of the Complaint, allegation paragraph 25. If you
6 could read that to yourself.

7 (Witness peruses document.)

8 A. Okay.

9 Q. Do you know what written requests, Whitestone
10 written requests this allegation refers to?

11 A. Which specific ones, no, I do not know.

12 Q. But you agree that if there was written
13 requests, demand design for engineer stamped drawings
14 that Yuanda did, in fact, comply with those requests to
15 design and provide stamped drawings?

16 A. With that specific portion of the work
17 that -- that they owed us, yes, but that was a miniscule
18 amount to the total cost and effort of what it -- of what
19 it -- of what was needed to actually do the remediation.

20 Q. If you can turn to the next page, Page 6, of
21 Exhibit 2. Read paragraph 29 to yourself.

22 (Witness peruses document.)

23 A. Okay.

24 Q. Starting on the second line and going to the

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1 third line, it says: "Yuanda has refused and/or failed
2 to positively respond to Whitestone's correspondence."
3 Do you know what that refers to?

4 A. I understand that as being failed to
5 positive -- I take failed to positively respond, meaning
6 that Yuanda's refusing to -- to partake in the
7 remediation work.

8 Q. Are you aware between January 2017 and
9 October -- August 2019 Yuanda was in communication with
10 James Dearth regarding the remediation work?

11 MR. CARBONE: Objection.

12 BY THE WITNESS:

13 A. I am not aware of any specific instances, no.

14 BY MR. GILL:

15 Q. Okay. So do you know what this allegation
16 regarding positive response means?

17 A. My interpretation is that Yuanda was -- was
18 not agreeing to -- to partake in the remediation of the
19 work. That's what I understand that to mean.

20 Q. And by partake in the remediation do you mean
21 pay for the installation of the new bracket?

22 A. Yes, that's what it would mean to me.

23 Q. Was there anything else that Yuanda was
24 refusing to do regarding the remediation?

37 (Pages 142 - 145)

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1 A. To me there was only three components. One
 2 was to do the design which was miniscule compared to the
 3 other two. The second being provide material, and third
 4 would be to either provide the labor or pay for the
 5 labor.
 6 Q. So a significant -- based on your answer
 7 here, a significant portion of this was to provide the
 8 material in your mind?
 9 A. A significant portion?
 10 Q. Of the remediation was to -- if not dollar
 11 amount, it was a significant obligation -- was to provide
 12 the additional or newly designed connections; is that
 13 accurate?
 14 A. No, I would not say that. I'd say
 15 dollar-wise it was -- it was not major. It was a
 16 relatively minor portion and not only for dollars but in
 17 terms of -- of obtaining the material because the
 18 material needed was -- is something that any local
 19 supplier would be -- would be easily able to do.
 20 Q. What did Yuanda -- did -- Strike that.
 21 Did Yuanda provide a lead time or time it
 22 would take for them to provide, fabricate and provide the
 23 new connections?
 24 A. I am not aware of that.

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1 Q. You just are aware or believe that it would
 2 take too long to get?
 3 A. No.
 4 MR. CARBONE: Objection.
 5 THE WITNESS: Do I answer?
 6 MR. CARBONE: Yeah.
 7 BY MR. GILL:
 8 Q. Please. If you can.
 9 A. So say the answer -- ask the question one
 10 more time.
 11 Q. I'm thinking of a better way to ask. It is
 12 your opinion that the lead time or the -- Strike that.
 13 It was your opinion or you got the impression
 14 that it would take too long for Yuanda to get the
 15 replacement parts to you so you could, you Whitestone,
 16 could install them in a timely fashion?
 17 A. I do not know if that's the case because I
 18 don't know at what point Yuanda told us that they would
 19 provide the material. It could have been -- as far as
 20 I -- as far as I know it, they could have offered that at
 21 the point where we've already ordered the material from
 22 somebody else. I can't -- I do not know.
 23 Q. And you don't know when you actually ordered
 24 the material?

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1 A. No, I do not know.
 2 Q. If you can turn to the last page of Exhibit
 3 27, Page 15, and read the allegation or statement 53 to
 4 yourself.
 5 A. Twenty-seven you said?
 6 Q. Exhibit 27, Page 15, statement 53.
 7 A. Statement 53?
 8 Q. Yes.
 9 A. Okay.
 10 (Witness peruses document.)
 11 Okay.
 12 Q. When did Whitestone complete the remediation
 13 project?
 14 A. I believe September or October of 2020.
 15 Q. Okay. Do you know when Whitestone knew the
 16 final actual cost, direct cost incurred for that
 17 remediation?
 18 A. I mean the exact to the dollar cost could
 19 vary even still to this day, but we knew what the
 20 ballpark was or would have been probably within a month
 21 of finishing.
 22 Q. Why would the cost, actual direct cost,
 23 installation cost vary to this day?
 24 A. Because it all depends. It's not a simple

Page 149

1 this guy makes \$20 an hour. It's this guy makes \$20 an
 2 hour with benefits and then what were the payroll costs
 3 at that time, what was the other -- FICA, what was the
 4 insurance at that time, so it's -- it's -- not that it's
 5 a moving target, but it does take some time to find out
 6 what the actual story is.
 7 Q. As of today, does Whitestone know what its
 8 actual direct costs incurred are for the remediation?
 9 A. I believe we have a lot better idea of what
 10 it costs now. Do I know what the exact cost is right
 11 now? No.
 12 Q. Okay. In your declaration, you say that
 13 "Costs and expenses are no less than \$400,000." Did you
 14 believe that that was a correct statement when you made
 15 it in November of 2020?
 16 A. Yes. We -- yes.
 17 Q. Okay. If you can look to Exhibit 19. This
 18 is an updated --
 19 A. Hold on a second, please.
 20 Q. Yep. Actually, if you can also look at
 21 Exhibit 17.
 22 (Witness peruses document.)
 23 A. Okay.
 24 Q. Okay. Exhibit 17 was produced by your

Page 150

1 attorney to me in the middle of October 2020. Do you see
2 the dollar amount on Page 1 of Exhibit 17 says that the
3 remediation summary for direct -- or for Whitestone's
4 costs is \$237,626.88?

5 A. Yes.

6 Q. Okay. Exhibit 19 was updated and provided to
7 me last week, last Wednesday. You see the total dollar
8 amount is the same -- 237 --

9 A. Hold on.

10 Q. Pardon?

11 A. Okay. I'm sorry. Hold on. Okay. Look at
12 Exhibit 19?

13 Q. Yeah. Do you see the dollar amount stated on
14 the first page of 19 is exactly the same as the dollar
15 amount stated on the cover page of 17?

16 A. Okay.

17 Q. You see it states \$237,000?

18 A. Yes.

19 Q. Why in your declaration did you say
20 Whitestone's costs were no less than \$400,000?

21 A. Because at the time before we actually
22 started the remediation work we thought the work would
23 have been more intensive where we had to actually remove
24 a lot of the glass, but we were -- luckily we were able

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1 to mitigate the costs for everybody and actually keep the
2 glass in place and install due to the remediation as per
3 the approved remediation drawings and calculations.
4 Q. But Whitestone had already incurred the
5 \$237,000 on November 9th, 2020 when you submitted this
6 declaration. So why did the declaration say costs were
7 in excess of \$400,000?

8 A. I do not know.

9 Q. Do you have an opinion whether this
10 remediation work that Whitestone performed, whether it
11 was warranty work or extras or punch list work or any of
12 the above or something different?

13 A. No, it was not warranty work. It was not
14 punch list work. Whether it's a -- an extra work due to
15 errors and omissions from the architectural team, that I
16 would agree with.

17 Q. You would agree that it is an errors and
18 omissions issue, therefore -- I'm not sure I heard you.
19 That's why I'm repeating. You would agree that it is an
20 errors and omissions, as a result of errors and
21 omissions, therefore, additional work?

22 A. That's my personal belief, yes.

23 Q. If it is errors and omissions additional
24 work, why does Yuanda owe Whitestone Whitestone's

Page 152

1 overhead and profit of \$33,000 as shown on Exhibit 19?

2 A. Overhead is a cost of the -- of the company.

3 Q. Why does Yuanda owe Whitestone that?

4 A. Because we believe that we were entitled to
5 the -- all the costs associated with this work, and
6 overhead is associated -- is a cost incurred by us.

7 Q. What is the actual overhead for the costs
8 incurred for the 26 days of this remediation project?

9 A. Overhead -- for us the way overhead is
10 calculated is usually just a percentage of the total cost
11 of -- of the -- of the work.

12 Q. I understand how it's generally calculated.
13 I want to know your actual overhead costs for the 26 days
14 of the remediation project.

15 A. That's the best answer I can give you is
16 overhead is generally calculated as a percentage of the
17 cost performed, so I -- I'm not qualified to give you any
18 other answer other than that.

19 Q. Is anyone at Whitestone qualified to give an
20 answer as to what the actual overhead costs are?

21 A. My accountant, I guess.

22 Q. Who is your accountant?

23 A. Would be Anchin, Block & Anchin.

24 Q. Does that \$33,000 on the first page of

Page 153

1 Exhibit 19 include profit, the 20 percent?

2 A. Yes, that would include overhead and profit,
3 yes.

4 Q. Why are you entitled to your profit from
5 Yuanda for additional work required by errors and
6 omissions?

7 A. Why? Because -- well, I -- I would make the
8 argument that doing this work took away from Whitestone
9 attending other contracted work and not paying attention
10 on those other contract -- that other contracted work
11 which we should have been and -- and losing out on profit
12 on that. That would be my argument.

13 Q. Why is that owed to Whitestone from Yuanda?

14 A. Because -- because it is our stance that
15 Yuanda is responsible to do this remediation as -- as --
16 until -- until -- at a time that we recoup the money from
17 the owner, if we recoup the money from the owner.

18 Q. The remediation was due to a design error and
19 omission in a design change; correct?

20 A. That's my personal opinion, yes.

21 Q. Okay. Where --

22 A. I'm --

23 Q. Where in the purchase order does it say that

24 Yuanda owed Whitestone Whitestone's overhead and profit

39 (Pages 150 - 153)

Page 154

1 for remediation work?

2 A. It does not specifically say that as far as

3 I'm aware.

4 Q. With respect to the 18 percent for insurance

5 listed on Exhibit 19, James Dearth testified that he was

6 informed to add 18 percent but he does not recall who

7 told him. Did you tell him to add 18 percent to this

8 number for insurance?

9 A. No. That probably came from our -- probably

10 from our -- our controller, CFO.

11 Q. How much in insurance did -- Strike that.

12 How much were Whitestone's actual insurance

13 costs during the 26 days of remediation?

14 A. I'm sure -- I'm sure the breakdown that we

15 were -- that we've given you is pretty accurate, that

16 that is a very -- that is an accurate portrayal of what

17 our insurance cost was.

18 Q. How much were Yuanda's actual insurance costs

19 during the 26 days of remediation?

20 A. Yuanda's?

21 Q. I'm sorry. How much was Whitestone's actual

22 insurance -- insurance costs?

23 A. Oh, according to this calculation, it was

24 36,248.

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1 Q. Is there any documentation to support that

2 \$36,248?

3 A. In this --

4 Q. None was provided I'll tell you. Does

5 White -- does Whitestone have any documentation to

6 support that 18 percent for insurance.

7 A. I'm sure this number was not pulled out of

8 thin air.

9 Q. How was it calculated?

10 A. I don't know how it was calculated.

11 Basically probably the insurance -- the insurance rates

12 that are indicated on our insurance policy.

13 Q. How much is Whitestone's annual premium for

14 insurance?

15 A. I do not know that off the top of my head.

16 Q. Is it over \$500,000?

17 A. It could be.

18 Q. What percentage --

19 A. But this is also -- this insurance also

20 includes general liability. I mean -- I'm sorry --

21 workmans' comp which has nothing to do with the premium,

22 it gets billed according to the amount of hours that your

23 guys worked, so there's a set rate for every hour that

24 the guys work, so this -- this insurance includes general

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1 liability and workmans' compensation.

2 Q. How many total hours did Whitestone work in

3 2020, man hours?

4 A. I have -- I have no idea.

5 Q. What percentage of Whitestone's total man

6 hours worked was this remediation project?

7 A. Of our direct labor?

8 Q. Yeah.

9 A. Miniscule probably.

10 Q. What percentage of Whitestone's revenues is

11 the \$102,000 for man hours for the remediation for 2020?

12 A. The total revenue would be absolutely

13 minimal, but the thing is the vast, vast majority of our

14 work is -- is -- is owner provided insurance, and this is

15 not the case on this job, so even though the total man

16 hours or the total billing is absolutely miniscule

17 compared to our total, its proportion of the billable

18 work that requires us to provide insurance is actually a

19 lot, lot more than what our total would be, so . . .

20 Q. What was the total number of man hours that

21 you had to provide insurance for in 2020?

22 A. I do not know. I do not know.

23 Q. Do you know an approximate percentage of this

24 remediation project compared to the total number of man

Page 157

1 hours for which you had to provide insurance?

2 A. I -- I wouldn't -- I wouldn't know. I

3 wouldn't be able to guess.

4 Q. If you look at the last page of

5 Exhibit 19 --

6 MR. CARBONE: Can I just interrupt you for a

7 second?

8 MR. GILL: Sure.

9 MR. CARBONE: For whatever reason I

10 disappeared from the gallery view. I don't know why.

11 MR. GILL: I think you accidentally hit turn

12 off -- stop video, so --

13 MR. CARBONE: I -- there we are.

14 MR. GILL: Yeah.

15 MR. CARBONE: Thank you.

16 MR. GILL: I didn't have a problem. I figured

17 it was a mistake. I wasn't going to make a big deal of

18 it.

19 MR. CARBONE: You never -- Adam, you never

20 know.

21 MR. GILL: I know. Hey, Don -- and this can

22 be off the record, all of this from Mr. Carbone's

23 statement until now.

24 (Discussion had off the

40 (Pages 154 - 157)

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1 record.)

2 BY MR. GILL:

3 Q. If you can look at the 12 lifted descriptions

4 or cost items on page 5788. Aside -- except for line

5 item 10 are there any costs listed here that are also

6 included in the description of vendor's work as far as

7 you know?

8 A. Item number 7 could be, item number 8 most

9 definitely and as -- and maybe certain portions of item

10 11 possibly.

11 Q. The hardware?

12 A. Yeah, I don't know what -- it have to be more

13 detail. I -- but quite possibly 11.

14 Q. You had mentioned in -- a couple minutes ago

15 when I was asking about the overhead and profit that to

16 the extent that Whitestone is not able to recover from

17 Sciamé in this dispute. I want to talk about very

18 briefly the dispute with Sciamé. Do you know where

19 Whitestone is in its process of pursuing its dispute with

20 Sciamé or pursuing its claim?

21 A. We've provided our notice of dispute and our

22 description of dispute. The ball in court is in

23 Sciamé/the owner, and it's been like that for a year and

24 a half unfortunately.

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1 Q. In New York is there a process where the

2 owner or the architect and a claimant have to proceed to

3 have some kind of administrative hearing to address the

4 dispute?

5 MR. CARBONE: I'm going to object. Aren't you

6 really asking him a legal question?

7 MR. GILL: Honestly, I'm asking because I

8 don't know. I mean if he knows --

9 MR. CARBONE: I could tell you.

10 MR. GILL: Okay. Well, we'll go off the

11 record later and you can tell me.

12 MR. CARBONE: Okay.

13 MR. GILL: If he doesn't know, then I'll move

14 on.

15 BY THE WITNESS:

16 A. I don't -- yeah, I'm not the proper person to

17 ask.

18 BY MR. GILL:

19 Q. And the reason I'm asking -- and I'll tell

20 you. I'm not going to hide the ball. You said to the

21 extent that your claim against Sciamé or the owner is

22 rejected Yuanda then you would feel owes Whitestone, so I

23 want to understand --

24 A. Correct. Yes.

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1 Q. -- where you are with the owner.

2 MR. CARBONE: I'm just going to object to your

3 form of summing up what he said because I disagree with

4 that, but go ahead.

5 MR. GILL: That's fine.

6 BY MR. GILL:

7 Q. If Whitestone does prevail against Sciamé or

8 the owner and it is found that the RFI includes new

9 design criteria that was not previously known and

10 Whitestone, therefore, recovers against Sciamé or the

11 owner, what is Whitestone going to do with the litigation

12 against Yuanda?

13 A. Assuming we recover prior to the -- to the --

14 completing the litigation against Yuanda or assuming --

15 Q. Let's take it in two parts. Prior to?

16 A. If we recover from before Yuanda, then we

17 would settle -- we would -- I personally would see no

18 reason to continue this. We would have to speak to

19 Yuanda directly and say look, guys, this is what it is,

20 let's make a decision, how we divvying this up and so

21 forth.

22 Q. If -- if Sciamé or the owner came to you or

23 if a court decided or the governor decided that

24 Whitestone is entitled to \$237,000 for this remedial

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1 work, what happens to the litigation? What if they

2 decide tomorrow that, what happens to the litigation that

3 Whitestone has against Yuanda?

4 MR. CARBONE: All right. Objection. You're

5 asking him to speculate, but he just answered that the

6 last question.

7 MR. GILL: He said he would settle up with

8 Yuanda, and I want to make sure -- my follow-up question

9 was if Whitestone gets everything that they are -- they

10 believe they are entitled to -- I don't understand what

11 he means by settle up with Yuanda, so that was my --

12 BY THE WITNESS:

13 A. Well, the only --

14 MR. CARBONE: Hold on one second because it's

15 a mischaracterization of what he said because he said he

16 would approach Yuanda to see if they could work out a

17 settlement. That's what he said.

18 MR. GILL: Okay.

19 MR. CARBONE: Okay.

20 MR. GILL: Let me withdraw the question and

21 ask it a different way.

22

23 BY MR. GILL:

24 Q. If an administrator, the governor, Sciamé,

41 (Pages 158 - 161)

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1 the owner before trial in this matter decides that
 2 Whitestone is entitled to the full amount it is seeking,
 3 is there anything else that Whitestone wants from Yuanda?
 4 A. I guess the only -- I'm sorry, Donald. Oh.
 5 The only -- the only remaining issue that I -- that I can
 6 think of at this moment that would have to be resolved
 7 would be it's my understanding that Yuanda would owe
 8 us -- it's also -- we are also entitled to our legal fees
 9 according to the purchase order from Yuanda. As far as I
 10 can tell -- see right now, that should hypothetically we
 11 settle up with the owner tomorrow, we get paid everything
 12 we're asking for, the only thing in question that would
 13 remain would be if any legal fees would be reimbursed to
 14 us.
 15 Q. One of the things that your -- the very first
 16 exhibit I showed you, Exhibit 20, which is your -- the
 17 initial disclosures says that -- talks about the
 18 aforesaid breaches on the contract, and I assume -- I
 19 know that wasn't written by you but that was -- refers to
 20 breaches by Yuanda of the purchase order.
 21 A. Where -- what --
 22 Q. It's the very --
 23 A. Exhibit 20?
 24 Q. Exhibit 20 under the statement regarding your

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1 knowledge. It's -- the aforesaid breaches is literally
 2 the last line but it kind of -- aforesaid refers to
 3 everything above that. Breaches of the contract at
 4 issue.
 5 A. What page?
 6 Q. The first page.
 7 MR. CARBONE: Give me an opportunity to get
 8 number 20. You say number 20 was his declaration?
 9 MR. GILL: It was -- no, not the declaration.
 10 It's the initial disclosure, the Rule 26 disclosure.
 11 MR. CARBONE: Oh, okay.
 12 MR. GILL: It was the first one --
 13 MR. CARBONE: All right. Let me see. No, I
 14 know. I know exactly what it looks like. I just need to
 15 find it.
 16 (Brief pause.)
 17 No idea where it went. Do you mind if I
 18 look over his shoulder?
 19 MR. GILL: Go right ahead.
 20 MR. CARBONE: Thank you.
 21 MR. GILL: It's really just a question or two,
 22 so go right ahead.
 23 MR. CARBONE: Go ahead.
 24 BY MR. GILL:

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1 Q. Okay. The second to the last line of the
 2 statement about what Steven Grzic knows and will testify
 3 about, it says: "Breaches of the contract at issue." Do
 4 you see that?
 5 A. Yes.
 6 Q. And in your opinion, your lay opinion -- I
 7 don't want a --
 8 A. Hold on. Hold on. Listen. Okay. Go ahead.
 9 I'm sorry.
 10 Q. I want to know what you believe or how you
 11 believe Yuanda breached the contract.
 12 A. That once the system was rejected by the
 13 owner/construction manager that once Yuanda was notified
 14 by Whitestone and directed -- and directed by Whitestone
 15 to Yuanda to remediate that they refused to remediate it.
 16 Q. And remediate in the way you just said is pay
 17 for -- actually perform or pay for the installation of
 18 the new connection?
 19 A. Correct.
 20 Q. And I want to make sure. I want to -- I want
 21 to -- we've talked about a lot and gone -- covered a lot
 22 of ground, and I want to make sure I understand your
 23 position, so I want to summarize.
 24 And in summary, it's my understanding that

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1 you believe Yuanda's design of the WT-3 clerestory was
 2 defective because it did not accommodate the 3.4 inches
 3 of movement that the architect disclosed?
 4 A. Yes.
 5 Q. But you agree that Sciamme, the architect
 6 and/or the consultant did not provide that design
 7 criteria, the 3.4 inches, until it provided the response
 8 to RFI 1130?
 9 A. Yes, but I'd like to clarify going back to
 10 your first comment. I -- I -- I -- I agree that it's
 11 rejected by Whitestone as -- so inasmuch as it is
 12 rejected by the ownership and -- and the construction
 13 manager.
 14 Q. I -- and just for clarification, I
 15 intentionally did not say rejected. I say that the
 16 clerestory was defective because of it did not
 17 accommodate the movement. Okay.
 18 A. Well, I -- I find -- okay. So --
 19 Q. Okay. But -- but that is true --
 20 MR. CARBONE: Wait. Wait. Wait. Adam, Adam,
 21 he was in the middle of -- you're cutting him off. Let
 22 him finish his thoughts, please.
 23
 24 BY MR. GILL:

<p style="text-align: right;">Page 166</p> <p>1 Q. Okay. Please finish.</p> <p>2 A. Okay. I -- my stance is it is rejected by</p> <p>3 Whitestone to Yuanda inasmuch as it is -- well, I'm</p> <p>4 sorry. What were the terms that you used, sorry, just so</p> <p>5 I can be on the record?</p> <p>6 Q. The question I asked and you said yes to --</p> <p>7 and feel free to correct me or clarify. I'm not saying</p> <p>8 it's set in stone. The question I asked is you believe</p> <p>9 that Yuanda's design of the WT-3 clerestory was defective</p> <p>10 because it did not accommodate the 3.4 inches of building</p> <p>11 movement.</p> <p>12 A. I feel that their design was defective</p> <p>13 inasmuch as it is rejected by the owner and -- and</p> <p>14 Sciame.</p> <p>15 Q. Do you have an opinion, you personally have</p> <p>16 an opinion whether the clerestory was defective because</p> <p>17 it failed to accommodate the movement, the 3.4 inches of</p> <p>18 movement?</p> <p>19 A. Well, yes, it is defective if it failed to</p> <p>20 accommodate for the 3.4 inches of movement. In that --</p> <p>21 in that sense, yes, it is defective.</p> <p>22 Q. And you agree that Yuanda was not told by</p> <p>23 Sciame, the architect or the consultants that the</p> <p>24 criteria was 3.4 inches of movement until after the RFI</p>	<p style="text-align: right;">Page 168</p> <p>1 MR. GILL: And I believe that they're</p> <p>2 reserving signature. They did so last time.</p> <p>3 MR. CARBONE: Yes, we are reserving signature.</p> <p>4 (The deposition concluded</p> <p>5 at 1:36 p.m.)</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>
<p style="text-align: right;">Page 167</p> <p>1 1130 response?</p> <p>2 A. That I agree with, yes.</p> <p>3 Q. At the time that Whitestone completed</p> <p>4 installation of the WT-3 clerestory did Whitestone have</p> <p>5 any reason to know that the building movement needed to</p> <p>6 accommodate 3.4 inches of movement?</p> <p>7 A. At the time of?</p> <p>8 Q. Completion of the original WT-3 clerestory</p> <p>9 installation.</p> <p>10 A. No, we were not aware of that 3.4 inch</p> <p>11 requirement as far as I know. I was not aware of it.</p> <p>12 Q. At the time that Whitestone completed</p> <p>13 installation of the WT-3 clerestory, did you have any</p> <p>14 reason to believe that the components that Yuanda</p> <p>15 fabricated did not comply with the requirements of the</p> <p>16 contract documents or purchase order?</p> <p>17 A. No.</p> <p>18 MR. GILL: That's all I have.</p> <p>19 MR. CARBONE: You're done?</p> <p>20 MR. GILL: That's it.</p> <p>21 MR. CARBONE: Okay. Good.</p> <p>22 THE VIDEOGRAPHER: Like to go off the record?</p> <p>23 MR. GILL: Yep.</p> <p>24 THE VIDEOGRAPHER: Off the record at 1:36.</p>	<p style="text-align: right;">Page 169</p> <p>1 SIGNATURE:</p> <p>2 It was agreed by and between counsel and the parties that</p> <p>3 the Deponent will read and sign the transcript of said</p> <p>4 deposition.</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>

<p style="text-align: right;">Page 170</p> <p>1 STATE OF ILLINOIS 2) SS: 3 COUNTY OF COOK 4 I, KELLY A. BRICHETTO, a Certified Shorthand 5 Reporter of said state, do hereby certify 6 that the within named witness, STEVEN GRZIC, was by me 7 first duly sworn to testify the truth, the whole truth 8 and nothing but the truth in the cause aforesaid; that 9 the testimony then given by the above-referenced witness 10 was by me reduced to stenotype in the presence of said 11 witness; afterwards transcribed, and that the foregoing 12 is a true and correct transcription of the testimony so 13 given by the above-referenced witness. 14 I do further certify that this deposition was 15 taken at the time and place in the foregoing caption 16 specified and was completed without adjournment. 17 I do further certify that I am not a relative, 18 counsel or attorney for either party or otherwise 19 interested in the event of this action. 20 21 22 23 24</p>	<p style="text-align: right;">Page 172</p> <p>1 Veritext Legal Solutions 2 1100 Superior Ave 3 Suite 1820 4 Cleveland, Ohio 44114 5 Phone: 216-523-1313 6 February 10, 2021 7 To: Mr. Carbone 8 Case Name: Whitestone Construction Corp. v. Yuanda USA Corp. 9 Veritext Reference Number: 4429365 10 Witness: Steven Grzic Deposition Date: 1/27/2021 11 Dear Sir/Madam: 12 The deposition transcript taken in the above-referenced 13 matter, with the reading and signing having not been 14 expressly waived, has been completed and is available 15 for review and signature. Please call our office to 16 make arrangements for a convenient location to 17 accomplish this or if you prefer a certified transcript 18 can be purchased. 19 If the errata is not returned within thirty days of your 20 receipt of this letter, the reading and signing will be 21 deemed waived. 22 Sincerely, 23 Production Department 24 NO NOTARY REQUIRED IN CA</p>
<p style="text-align: right;">Page 171</p> <p>1 IN WITNESS WHEREOF, I do hereunto set my hand 2 this 10th day of February, 2021. 3 4 5 6 <i>Kelly Brichetto</i> 7 KELLY A. BRICHETTO 8 CSR License No. 84-3252 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p>	<p style="text-align: right;">Page 173</p> <p>1 DEPOSITION REVIEW 2 CERTIFICATION OF WITNESS 3 ASSIGNMENT REFERENCE NO: 4429365 4 CASE NAME: Whitestone Construction Corp. v. Yuanda USA Corp. 5 DATE OF DEPOSITION: 1/27/2021 6 WITNESS' NAME: Steven Grzic 7 In accordance with the Rules of Civil 8 Procedure, I have read the entire transcript of 9 my testimony or it has been read to me. 10 I have made no changes to the testimony 11 as transcribed by the court reporter. 12 13 Date Steven Grzic 14 Sworn to and subscribed before me, a 15 Notary Public in and for the State and County, 16 the referenced witness did personally appear 17 and acknowledge that: 18 They have read the transcript; 19 They signed the foregoing Sworn 20 Statement; and 21 Their execution of this Statement is of 22 their free act and deed. 23 I have affixed my name and official seal 24 this _____ day of _____, 20____. 25 26 Notary Public 27 Commission Expiration Date</p>

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1 DEPOSITION REVIEW
CERTIFICATION OF WITNESS

2 ASSIGNMENT REFERENCE NO: 4429365

3 CASE NAME: Whitestone Construction Corp. v. Yuanda USA Corp.
DATE OF DEPOSITION: 1/27/2021

4 WITNESS' NAME: Steven Grzic

5 In accordance with the Rules of Civil
Procedure, I have read the entire transcript of
6 my testimony or it has been read to me.
7 I have listed my changes on the attached
Errata Sheet, listing page and line numbers as
8 well as the reason(s) for the change(s).
9 I request that these changes be entered
as part of the record of my testimony.

10 I have executed the Errata Sheet, as well
11 as this Certificate, and request and authorize
that both be appended to the transcript of my
12 testimony and be incorporated therein.

13 _____
Date Steven Grzic

14 Sworn to and subscribed before me, a
15 Notary Public in and for the State and County,
the referenced witness did personally appear
16 and acknowledge that:
17 They have read the transcript;
They have listed all of their corrections
18 in the appended Errata Sheet;
They signed the foregoing Sworn
19 Statement; and
Their execution of this Statement is of
20 their free act and deed.
21 I have affixed my name and official seal
22 this _____ day of _____, 20____.
23 _____
Notary Public

24 _____
25 Commission Expiration Date

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1 ERRATA SHEET
VERITEXT LEGAL SOLUTIONS MIDWEST

2 ASSIGNMENT NO: 1/27/2021

3 PAGE/LINE(S) / CHANGE /REASON

4 _____

5 _____

6 _____

7 _____

8 _____

9 _____

10 _____

11 _____

12 _____

13 _____

14 _____

15 _____

16 _____

17 _____

18 _____

19 _____

20 Date Steven Grzic

21 SUBSCRIBED AND SWORN TO BEFORE ME THIS _____

22 DAY OF _____, 20____.

23 _____
Notary Public

24 _____

25 Commission Expiration Date

45 (Pages 174 - 175)

Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted fashion to authenticated parties who are permitted to access the material. Our data is hosted in a Tier 4 SSAE 16 certified facility.

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